

REPORTS
OF THE
PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSOURI

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Nancy Dippell
Reporter of Opinions

JEFFERSON CITY, MISSOURI
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PREFACE

This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning January 1, 2023 through December 31, 2023. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

The syllabi or headnotes appended to the Reports and Orders are not a part of the findings and conclusions of the Commission, but are prepared for the purpose of facilitating reference to the opinions. In preparing the various syllabi for a particular case an effort has been made to include therein every point taken by the Commission essential to the decision.

The *Digest of Reports* found at the end of this volume has been prepared to assist in the finding of cases. Each of the syllabi found at the beginning of the cases has been catalogued under specific topics which in turn have been classified under more general topics. Case citations, including page numbers, follow each syllabi contained in the Digest.

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STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water)
 Company's Application for a Certificate of)
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 Install, Own, Acquire, Construct, Operate,) **File No. WA-2022-0311**
 Control, Manage and Maintain a Water)
 System and Sewer System in and around)
 the City of Stewartsville, Missouri)

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

ACCOUNTING

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service."

§45. Water

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in Stewartsville, Missouri.

EVIDENCE, PRACTICE AND PROCEDURE**§8. Stipulation****§30. Settlement procedures**

The Commission found that Commission Rule 20 CSR 4240-2.115(2) provides that a non-unanimous stipulation and agreement can be treated as unanimous if no party objects within seven days.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either “necessary or convenient for the public service.”

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

RATES**§68. Establishment of rate base**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in Stewartsville, Missouri.

§4. Transfer, lease and sale**§21. Accounting****§22. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

VALUATION**§9. Methods or theories generally****§11. Rule, formula or judgment as a guide****§14. For rate making purposes****§15. Purchase or sale price****§78. Water****§79. Sewer**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in Stewartsville, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§4. Transfer, lease and sale**§24. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day
of January, 2023.

In the Matter of Missouri-American Water	)	
Company's Application for a Certificate of	)	
Convenience and Necessity Authorizing it to	)	<u>File No. WA-2022-0311</u>
Install, Own, Acquire, Construct, Operate,	)	
Control, Manage and Maintain a Water	)	
System and Sewer System in and around	)	
the City of Stewartville, Missouri	)	

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: January 11, 2023

Effective Date: February 10, 2023

On May 10, 2022,¹ Missouri-American Water Company (MAWC) filed an application (Application) regarding the acquisition of existing unregulated municipal water and sewer systems in and around the City of Stewartville, Missouri located in DeKalb and Clinton Counties (Stewartville Systems).² MAWC requested Certificates of Convenience and Necessity (CCNs) to install, own, acquire, construct, operate, control, manage, and maintain the Stewartville Systems. MAWC has chosen to exercise an option under Section 393.320, RSMo (Supp. 2022), regarding ratemaking rate base when a large water public utility acquires a small water utility. Lastly, MAWC requested a waiver of the 60-day notice of case filing requirement.

¹ All dates refer to 2022 unless otherwise stated.

² The Application was divided into separate files for the water system acquisition and the sewer system acquisition. These were consolidated by the Commission, with File No. WA-2022-0311 designated as the lead file number.

MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. MAWC currently provides water service to approximately 474,000 customers and sewer service to approximately 16,500 customers in service areas throughout Missouri. In recent years, MAWC has acquired many existing small water and sewer systems. MAWC is a subsidiary of American Water Works Company, Inc., and is affiliated with other American Water companies that undertake tasks associated with utility service, such as customer billing and technical resources.

Stewartsville is a fourth-class city with a population of approximately 733 people, located in DeKalb County. The Stewartsville Systems serve 357 water accounts and 354 sewer accounts. On November 2, 2021, the voters of Stewartsville voted overwhelmingly to sell the water and sewer utility assets to MAWC for \$1.9 million. On February 17, MAWC entered into a Purchase Agreement with Stewartsville to obtain substantially all the water and sewer utility assets of the Stewartsville Systems.

The Commission issued notice and set a deadline for intervention requests, but received no requests to intervene. A virtual public hearing was held on September 12, but no witnesses testified.

On October 11, the Staff of the Commission (Staff) filed its recommendation and memorandum. Staff recommended that the Commission grant CCNs, subject to certain conditions. Staff also stated that it did not oppose using the \$1.9 million purchase price as the rate-making rate base for the Stewartsville Systems, which represents the alternative valuation procedure requested under Section 393.320, RSMo (Supp. 2022).

Staff's memorandum also noted the existence of two customers outside the Stewartsville city limits, but who nonetheless receive service from the Stewartsville Systems.

On October 21, MAWC responded stating its acceptance of Staff's recommendation and that it did not object to Staff's proposed conditions.³ With its October 21 pleading, MAWC also filed revised proposed maps and legal descriptions. On October 25, Staff replied stating it neither objected to nor recommended approval of the revised proposed maps and legal descriptions filed on October 21 due to questions surrounding the service provided to the two customers outside of the city limits of Stewartsville. On December 13, the Commission subsequently directed the filing of a status report.

On December 29, MAWC and Staff filed a non-unanimous *Stipulation and Agreement* (Agreement) that resolves all issues between them. The Agreement recommends Commission approval of the requested CCNs with certain conditions. Commission Rule 20 CSR 4240-2.115(2) provides that a non-unanimous stipulation and agreement can be treated as unanimous if no party objects within seven days. The other party to the case, the Office of the Public Counsel, did not sign the Agreement, but did not object, and no other objections were received. Accordingly, the Commission will treat the Agreement as unanimous.

Water system

The original Stewartsville water system was installed in 1954. It currently consists of a 200,000 gallon elevated storage tank and a water distribution system that includes piping, fire hydrants, water meters, and valving. Periodic replacement and upgrades have

³ MAWC stated it may seek an extension of the 60-day allowance to meet the booking of assets condition. See the condition below at ordered paragraph number 3.f.

been made to the system as needed. The elevated storage tank was installed in 1994, and a significant water main replacement/upgrade was completed in 2017. Overall, the distribution system consist of approximately 9.8 miles of water main ranging from 2-inch to 6-inch in diameter, 21 fire hydrants, and 397 services and meters. MAWC and Stewartsville state that the distribution system maintains adequate water pressure throughout the system under normal conditions. Stewartsville currently purchases water for its water system from Public Water Supply District 1 of DeKalb County, which is ultimately supplied by MAWC.

Staff inspected the Stewartsville water system and found it to be in good condition overall. MAWC anticipates several capital improvements to the water system for general maintenance and operational efficiency over the next five years. MAWC's five-year approach and proposed improvements were consistent with Staff's review and observations.⁴

Sewer system

The Stewartsville sewer system consists of a collection system and a wastewater treatment plant. The collection sewer system consists of approximately seven miles of 8-inch diameter gravity mains, approximately 2,000 feet of 6-inch diameter force mains, 154 manholes, and two lift stations, known as the North and South lift stations. The North Lift Station discharges wastewater to the South Lift Station and the South Lift Station discharges wastewater to the treatment system. Both lift stations contain dual 3-horsepower submersible pumps which operate alternately. In 2015, all known gravity

⁴ MAWC's preliminary cost estimates for these repairs and improvements were provided in Staff's Memorandum and were for informational purposes only. The prudence of specific investments will be reviewed during a future rate case to be filed by MAWC.

mains were inspected using closed caption television and were mapped. These mains are 8-inch diameter vitrified clay, polyvinyl chloride (PVC), and iron pipe. The wastewater treatment plant is a three-cell lagoon system with two aerators in Cell #1. According to the DNR operating permit the design flow is 104,600 gallons per day and the actual flow is 41,500 gallons per day.

Staff inspected the Stewartsville sewer collection and wastewater treatment systems on September 12, 2021. Staff observed good housekeeping at each location it inspected. Staff found the collection sewer and wastewater treatment systems to be in fair condition overall.

MAWC anticipates several capital improvements to the sewer system for general maintenance and operational efficiency over the next five years. MAWC's five-year approach and proposed improvements are consistent with Staff's review and observations.⁵

Ratemaking rate base

Section 393.320, RSMo (Supp. 2022), establishes a required process for determining the appraised fair market value of a "small water utility" when purchased by a "large water public utility." The statute directs that the ratemaking rate base is the lesser of the purchase price or the appraised value. MAWC meets the statutory definition of a "large water public utility" and the Stewartsville System meets the definition of a "small water utility." MAWC has elected for the Commission to establish the ratemaking rate base of the Stewartsville Systems during its acquisition.⁶

⁵ MAWC's preliminary cost estimates for these repairs and improvements were provided in Staff's Memorandum and were for informational purposes only. The prudence of specific investments will be reviewed during a future rate case to be filed by MAWC.

⁶ Application and Motion for Waiver, filed May 10, 2022, para. 14 that begins on p. 4.

The agreed upon purchase price for the Stewartsville Systems is \$1,900,000.⁷ The total appraised value of the Stewartsville Systems is \$2,300,000.⁸ Staff has also stated it does not object to using \$1,900,000 as the combined ratemaking rate base for the Stewartsville System. No other responses to the rate base election

Taking into consideration the statutory requirements, the appraisal, the purchase price, and that no party has challenged the reasonableness of the appraisal, the Commission finds that the purchase price, is the appropriate ratemaking rate base - \$900,000 for the water system and a ratemaking rate base of \$1,000,000 for the sewer system.

Decision

The Commission may grant a CCN to operate utility systems after determining that such operation is either “necessary or convenient for the public service.”⁹ The Commission may also impose such conditions as it deems reasonable and necessary upon its grant of permission and approval.¹⁰ The Commission has stated five criteria, known as the *Tartan* criteria, which it has used when considering an application for a CCN:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant’s proposal must be economically feasible; and

⁷ Application and Motion for Waiver, filed May 10, 2022, para. 16.

⁸ Application and Motion for Waiver, filed May 10, 2022, appendix G, p. 3 of 101.

⁹ Section 393.170, RSMo (Supp. 2022).

¹⁰ Section 393.170.3, RSMo (Supp. 2022).

- 5) The service must promote the public interest.¹¹

Based on the verified Application, Staff's recommendation, and the uncontested Agreement, the Commission finds there is a need for water and sewer service in Stewartsville and MAWC is qualified to provide that service. The Commission finds that MAWC has the financial ability to acquire the Stewartsville Systems and adequately operate them in the future and that it is economically feasible for MAWC to do so. The involvement of the Stewartsville elected officials and the public vote in support of the sale demonstrate the grant of CCNs will promote the public interest. Additionally, the continued safe and adequate operation of the Stewartsville Systems promote the public interest. The Commission further finds that granting the CCNs with the reasonable and necessary conditions proposed by Staff and agreed to by MAWC will promote the public interest.

The Commission finds that MAWC's ownership and operation of the Stewartsville Systems is necessary and convenient to the public service of the Stewartsville Systems' water and sewer customers. The Commission concludes that the unopposed conditions proposed by the Agreement for granting a CCN are reasonable. Therefore, the Commission will grant MAWC CCNs for the service areas currently served by the Stewartsville System subject to the conditions proposed in the Agreement, including setting the rate making rate base at the purchase price with reasonable and prudent transaction, closing, and transition costs included.

MAWC's Application also asked the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). The Commission finds good cause exists for waiver based on MAWC's verified declaration that it had no communication with the

¹¹ *In re Tartan Energy Company*, 3 Mo.P.S.C.3d 173, 177 (1994).

Commission regarding substantive issues likely to arise in this file within 150 days before filing its Application.

THE COMMISSION ORDERS THAT:

1. The 60-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).

2. The Agreement filed on December 29, 2022, is approved as a resolution of all issues. The signatory parties are ordered to comply with the terms of the Agreement. A copy of the Agreement is attached to this order and is incorporated by reference.

3. Upon closing, MAWC is granted a certificate of convenience and necessity to provide water and sewer service in the Stewartsville Systems service area, subject to the conditions and requirements contained in the Agreement, including the filing of tariffs, as set out below:

- a. MAWC shall adopt the existing water rates applicable to customers outside the St. Louis County region and existing sewer rates applicable to customers in the Trimble service area for the approved service areas;
- b. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a revised service area map, revised service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively. Such tariff sheets shall include the maps and legal descriptions attached to the Agreement as Appendices A through D;
- c. MAWC shall notify the Commission of closing on the assets within five days after such closing;

- d. If closing on the water and sewer system assets does not take place within 30 days following the effective date of this Commission order, MAWC shall submit a status report within five days after this 30-day period regarding the status of closing and additional status reports within five days after each additional 30-day period until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
- e. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Stewartsville Systems service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Stewartsville Systems service area in both the water and sewer tariffs;
- f. MAWC shall develop a plan to book all of the Stewartsville Systems plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, such that current rate base is broken down as \$900,000 for the water system, and \$1,000,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan shall be submitted to Staff for review within 60 days after closing on the assets;
- g. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- h. MAWC shall adopt the depreciation rates ordered in File No. WR-2020-0344 for the Stewartsville Systems assets;
- i. MAWC shall provide to Staff's Customer Experience Department (CXD Staff) an example of its actual communication with the Stewartsville Systems customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach MAWC, within ten days after closing on the assets;
- j. MAWC shall obtain from Stewartsville, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

- k. MAWC shall distribute to the Stewartsville Systems customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water and¹² sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within 30 days of closing on the assets;
- l. MAWC shall provide to the CXD Staff a sample of five billing statements from the first month's billing within 30 days of closing on the assets;
- m. MAWC shall communicate with the Stewartsville Systems customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff;
- n. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Stewartsville Systems customers;
- o. MAWC shall include the Stewartsville Systems customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and
- p. MAWC shall file notice in this case outlining completion of the above recommended training, customer communications, and notifications within ten days after such communications and notifications are completed.

4. MAWC is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the Application.

5. Pursuant to Section 393.320, RSMo (Supp. 2022), upon closing, the Commission authorizes MAWC to establish ratemaking rate base in the amount of \$900,000 for the Stewartsville water system and a ratemaking rate base in the amount of \$1,000,000 for the Stewartsville sewer system, along with reasonable and prudent transaction, closing, and transition costs incurred by MAWC.

¹² The words "water and" have been inserted with the understanding both water and sewer were meant to be included.

6. Except as required by Section 393.320, RSMo (Supp. 2022), the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area as discussed in the body of this order, in any later proceeding.

7. This order shall become effective on February 10, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Hatcher, Senior Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri-American Water	)	
Company for a Certificate of Convenience	)	
and Necessity Authorizing it to Install, Own,	)	
Acquire, Construct, Operate, Control,	)	File No. WA-2022-0311
Manage and Maintain a Water System and	)	
Sewer System in and around the City of	)	
Stewartsville, Missouri	)	

STIPULATION AND AGREEMENT

COME NOW the Staff of the Missouri Public Service Commission (Staff) and Missouri-American Water Company (MAWC (collectively, the “Parties”),¹ by and through counsel, and for their *Stipulation and Agreement* in this matter hereby state as follows to the Missouri Public Service Commission (Commission):

1. On May 10, 2022, MAWC filed an application that seeks permission and approval for certificates of convenience and necessity (CCN) associated with the acquisition of a water system and sewer system in and around the City of Stewartsville, Missouri, located in DeKalb and Clinton Counties. On October 11, 2022, Staff filed its recommendation for the Commission to grant MAWC CCNs with the conditions and actions described in Staff’s *Memorandum*.

2. Staff further indicated that “MAWC has agreed to submit a revised map and legal description to be included in MAWC’s water and sewer tariff, MO P.S.C. No. 13, and MO PSC No. 26, respectively.” While MAWC asserted in its *Response to Staff’s Recommendation* that certain maps and legal descriptions were appropriate for such filing, Staff filed its reply and

¹ The Office of the Public Counsel is not a signatory to this Stipulation and Agreement, but does not oppose it, in part because no member of the public offered testimony or other evidence at the local public hearing the Commission held to hear directly input from the public. Thus, this *Stipulation and Agreement* may be treated as unanimous in accordance with Commission Rule 20 CSR 4240-2.115(2)(C).

requested the Commission enter no orders due to the pending final maps and legal descriptions. The Commission ultimately issued its order directing that a status report be filed by January 4, 2023. In light of those filings and in order to resolve all remaining issues in this case, the Parties have reached the following agreements found herein.

3. The Parties agree and recommend, because it is necessary and convenient to the public interest, that the Commission grant MAWC permission, approval and Certificates of Convenience and Necessity authorizing MAWC to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems for the public subject to the following conditions and actions:

1. Grant MAWC a CCN to provide water and sewer service in the proposed Stewartsville service areas, as outlined herein;
2. Approve MAWC using existing water rates applicable to customers outside the St. Louis County region and existing sewer rates applicable to customers in the Trimble service area for approved service areas;
3. Require MAWC submit tariff sheets, to become effective before closing on the assets, to include a revised service area map, revised service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively. Such tariff sheets shall include the maps and legal descriptions attached hereto as Appendices A (Map-water), B (legal description – water), C (map - sewer) and D (legal description – sewer);
4. Require MAWC to notify the Commission of closing on the assets within five (5) days after such closing;
5. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require MAWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
6. If MAWC determines that a transfer of the assets will not occur, require MAWC to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit

tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Stewartsville service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Stewartsville service area in both the water and sewer tariffs;

7. Require MAWC to develop a plan to book all of the Stewartsville plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, such that current rate base is broken down as \$900,000 for the water system, and \$1,000,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within 90 days after closing on the assets;

8. Require MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

9. Adopt for MAWC water and sewer assets the depreciation rates ordered for MAWC in Case No. WR-2020-0344;

10. Require MAWC to provide to the Customer Experience Department an example of its actual communication with the Stewartsville service area customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

11. Require MAWC to obtain from the Stewartsville, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

12. Except as required by Section 393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;

13. Require MAWC to distribute to the Stewartsville customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

14. Require MAWC to provide to the CXD Staff a sample of five (5) billing statements from the first month's billing within thirty (30) days of closing on the assets;

15. Require MAWC communicate with the Stewartsville customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff;
16. Require MAWC to provide training to its call center personnel regarding rates and rules applicable to the Stewartsville customers;
17. Require MAWC to include the Stewartsville customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
18. Require MAWC to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications; and,
19. MAWC shall include the following language in MAWC's post-closing letter to Stewartsville customers:

MAWC will provide water service pursuant to the rates currently applicable to MAWC's St. Joseph Service Area. It will utilize the rules governing the rendering of water service currently found in MAWC's water tariff, P.S.C. MO No. 13. MAWC will provide sewer service pursuant to the rates currently applicable to MAWC's Trimble Service Area and to utilize the rules governing the rendering of sewer service currently found in MAWC's sewer tariff P.S.C. MO No. 26.

MAWC has filed a water and sewer rate case before the Missouri Public Service Commission, File No. WR-2022-0303, in which these rates and rules will be reviewed. It is expected that any change in rates as a result of this case will be effective by June 1, 2023.

GENERAL PROVISIONS

4. Unless otherwise explicitly provided herein, none of the Signatories shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost of service or valuation determination or cost allocation, rate design, revenue recovery, or revenue-related methodology. Except as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding.

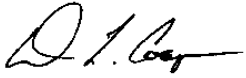
5. This Stipulation has resulted from negotiations among the parties, and the terms hereof are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a party objects, then this Stipulation shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

6. In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1,¹ their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §386.500, and their respective rights to judicial review pursuant to §386.510. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. These waivers do not apply to any issues explicitly not addressed by this Stipulation. The Signatories agree that any and all discussions, suggestions, or memoranda reviewed or discussed, related to this Stipulation shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

WHEREFORE, the signatories respectfully request that the Commission issue an order approving all of the specific terms and conditions of this *Stipulation and Agreement*; and that the

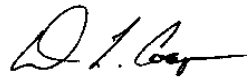
Commission grant such other and further relief as it considers just in the circumstances.

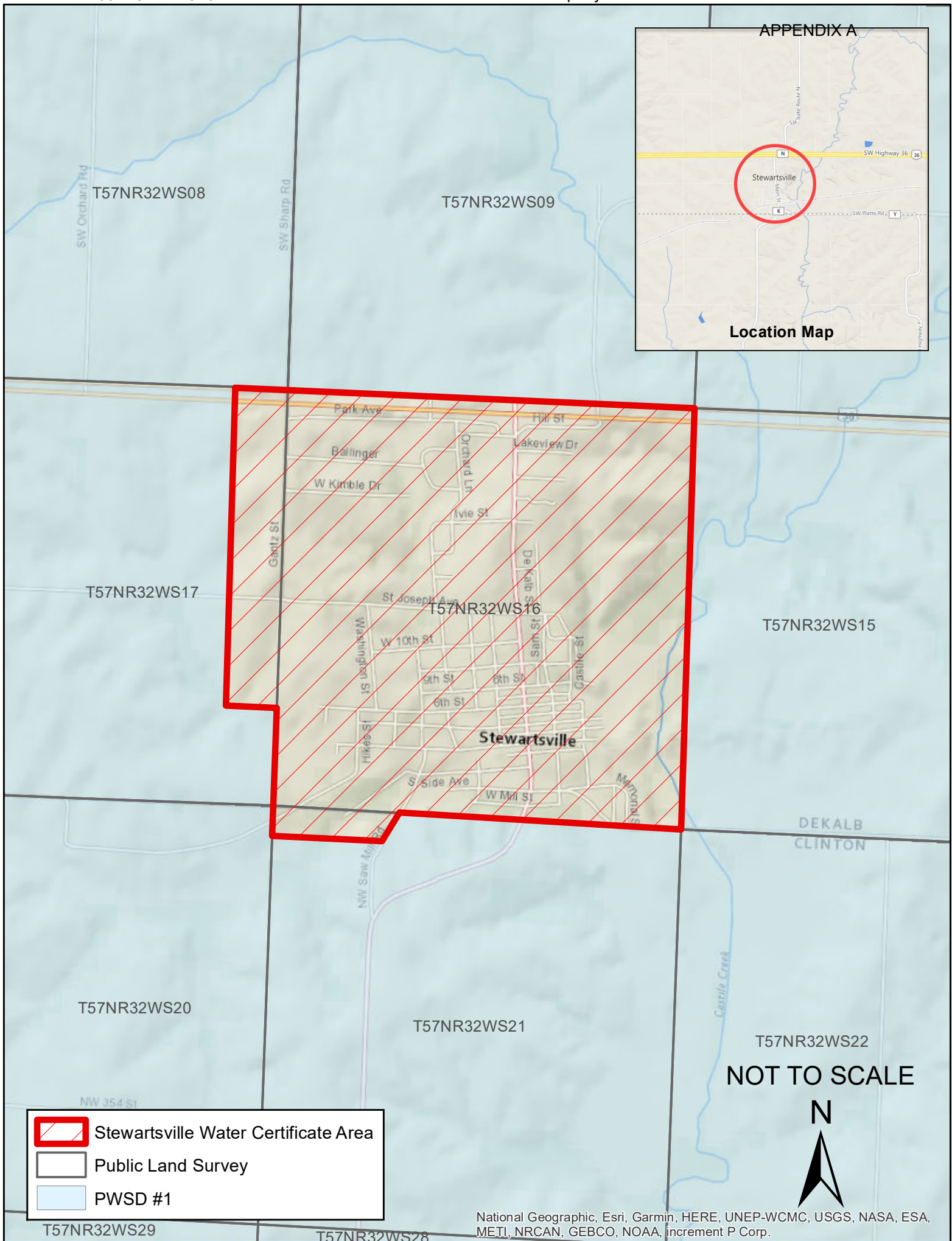
Respectfully submitted,

 Dean L. Cooper Mo. Bar 36592 BRYDON, SWEARENGEN & ENGLAND P.C. 312 East Capitol Avenue P.O. Box 456 Jefferson City, MO 65102-0456 Telephone: (573) 635-7166 dcooper@brydonlaw.com Timothy W. Luft, Mo Bar #40506 Rachel L. Niemeier, Mo. Bar #56073 MISSOURI-AMERICAN WATER COMPANY 727 Craig Road St. Louis, MO 63141 (314) 996-2279 (314) 997-2451 (telefax) Timothy.Luft@amwater.com Rachel.Niemeier@amwater.com ATTORNEYS FOR MISSOURI- AMERICAN WATER COMPANY	//S// Paul T. Graham by dlc Paul T. Graham #30416 Senior Staff Counsel Missouri Public Service Commission P.O. Box 360 Jefferson City, Mo 65102-0360 (573) 522-8459 Paul.graham@psc.mo.gov ATTORNEY FOR STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on this 29th day of December, 2022, to all counsel of record.



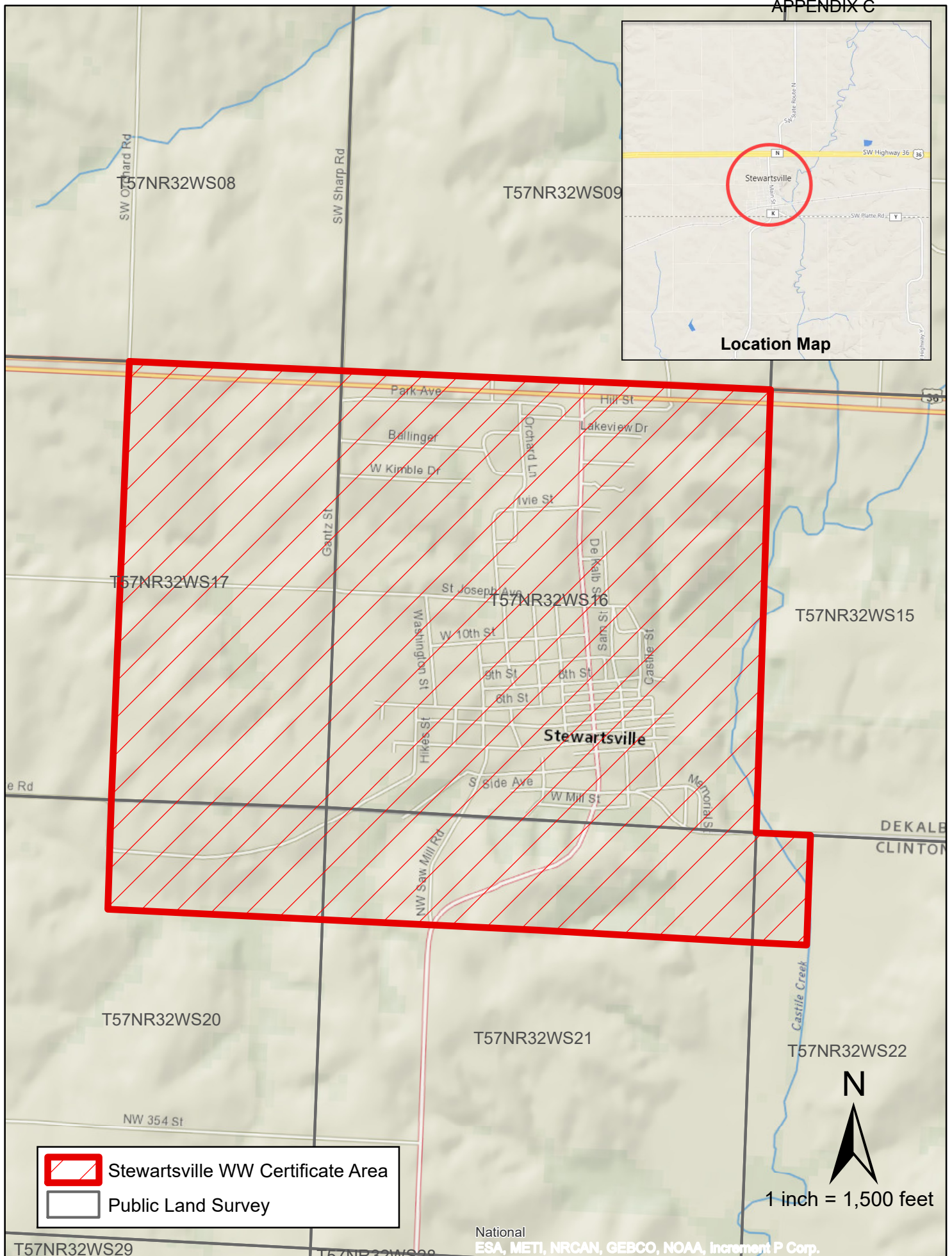


Water Certificated Area

Legal Description

A tract of land in Section 16 and part of Sections, 17, and 21, Township 57 North, Range 32 West, in, City of Stewartsville, Dekalb County and Clinton County, Missouri and being more particularly described as follows:

Beginning at the Northwest corner of **Section 16, Township 57 North, Range 32 West**; thence East, along the north line of said **Section 16** to the Northeast corner thereof, being also the Northwest corner of **Section 15**; thence South, along the East line of said **Section 16** to the Southeast corner thereof, being also the Northeast corner of **Section 21** and the Northwest corner of **Section 22**; thence West, along the South line of said **Section 16** to the Southeast line of NW Saw Mill Road; thence in a Southwest direction and along said Southeast line of said road, approximately 516 feet more or less to a point being its intersection with the Southwest corner of a property now or formerly owned by Byron Thornton and Danielle Thornton, husband and wife, according to the deed recorded in Deed Book 2016, Page 3402 of the Clinton County Missouri Records; thence in a direction West, to the East line of **Section 20**; thence North, along said East line to the Northeast corner thereof, being also the Southeast corner of the Southeast Quarter of **Section 17**; continuing north along the East line of the Southeast Quarter of Section 17 to the Northeast corner of the Southeast Quarter of the Southeast Quarter of **Section 17**, being also the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 17 ; thence West, along the South line of said Northeast Quarter Section to the Southwest corner of the East Half of the Northeast Quarter of the Southeast Quarter of **Section 17**; thence North, along the West line of said East Half of said Quarter-Quarter Section and its North projection to the Northwest corner of the East Half of the Northeast Quarter of the Northeast Quarter of said **Section 17**; thence East, along the North line of said Quarter-Quarter Section to the Northeast corner, being also the Northwest corner of Section 16, Township 57 North, Range 32 West, thereof and the POINT OF BEGINNING. Containing 34,412,400,000 Square Feet or 790 acres more or less.



Sewer System Certificated Area

Legal Description

A tract of land in Section 16 and part of Sections, 17, 20, 21 and 22, Township 57 North, Range 32 West, in, City of Stewartsville, Dekalb County and Clinton County, Missouri and being more particularly described as follows:

Beginning at the Northwest corner of **Section 16, Township 57 North, Range 32 West**; thence East, along the north line of said **Section 16** to the Northeast corner thereof, being also the Northwest corner of **Section 15**; thence South, along the East line of said Section to the Southeast corner thereof, being also the Northeast corner of **Section 21** and the Northwest corner of **Section 22**; thence East, along the North line **Section 22** to the Northeast corner of the West Half of the Northwest Quarter of the Northwest Quarter said **Section 22**; thence South, along the East line of said West Half to the Southeast corner thereof; thence West, along the South line of said West Half to the Southwest corner thereof, being also on the West line of said **Section 22** and being the Southeast corner of the Northeast Quarter of the Northeast Quarter of **Section 21**; thence West, along the South line of said Quarter-Quarter Section and the West prolongation thereof to the Southwest corner of the Northwest Quarter of the Northwest Quarter of **Section 21**, being also on the West line of said **Section 21** and the East line of **Section 20**; thence continuing West, along the South line of said Quarter-Quarter Section and the West prolongation thereof to the Southwest corner of the Northwest Quarter of the Northeast Quarter of **Section 20**; thence North, along the West line of said Quarter-Quarter Section to the Northwest corner thereof, being also the Southwest corner of the Southeast Quarter of **Section 17**; thence North, along the West line of said Quarter section and the North prolongation thereof to the Northwest corner of the Northeast Quarter of said **Section 17**, being also the Southwest corner of the Southeast Quarter of **Section 8**; thence East, along the North line of said Quarter section to the Northeast corner thereof and the POINT OF BEGINNING. Containing 53,143,200 Square Feet or 1,200 acres more or less.

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water	)	
Company's Application for a Certificate of	)	
Convenience and Necessity Authorizing it to	)	
Install, Own, Acquire, Construct, Operate,	)	<u>File No. WA-2023-0071</u>
Control, Manage and Maintain a Water	)	
System and Sewer System in and around the	)	
City of Smithton, Missouri	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

ACCOUNTING

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

§45. Water

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

RATES**§68. Establishment of rate base**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

§4. Transfer, lease and sale**§21. Accounting****§22. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

VALUATION**§9. Methods or theories generally****§14. For rate making purposes****§15. Purchase or sale price****§78. Water****§79. Sewer**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

§2. Certificate of convenience and necessity

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal

must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§4. Transfer, lease and sale

§23. Accounting

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
January, 2023.

In the Matter of Missouri-American Water)
Company's Application for a Certificate of)
Convenience and Necessity Authorizing it to)
Install, Own, Acquire, Construct, Operate,)
Control, Manage and Maintain a Water)
System and Sewer System in and around the)
City of Smithton, Missouri)

File No. WA-2023-0071

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: January 11, 2023

Effective Date: February 10, 2023

On June 21, 2022, Missouri-American Water Company (MAWC) filed an application seeking a certificate of convenience and necessity (CCN) for authority to acquire and operate the assets of a water and sewer system in and around the City of Smithton, Missouri (Smithton or the City). The currently unregulated Smithton water and sewer systems serve approximately 220 water accounts and 220 sewer accounts. Smithton has a population of approximately 510. MAWC's application also requests a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1), and attached its verification affirming that it did not have contact with the Commission about the subject matter of its application within 150 days before filing the application. The application was docketed in two separate cases that were consolidated by the Commission with this being the lead case.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff (Staff) to file a recommendation

about MAWC's application. On December 19, 2022, Staff recommended the Commission approve MAWC's request for a CCN, with additional conditions and actions to be taken, which were described in the memorandum accompanying Staff's recommendation.

MAWC is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction of the Commission. MAWC currently provides water service to approximately 475,000 customers and sewer service to approximately 18,000 customers in Missouri. MAWC is current on its water and sewer Public Service Commission assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested CCN would allow MAWC to provide water and sewer service to Smithton's existing customers by acquiring Smithton's existing water and sewer systems. Smithton held virtual town hall meetings on March 11, 2021, and April 1, 2021, to discuss the proposed sale to MAWC. Smithton held a vote on April 6, 2021, on whether the water and wastewater utility owned by the City should be sold. Over 76% of the votes were in favor of the sale. There was a total of 104 votes cast with 80 voting "yes" and 24 voting "no." MAWC provided information about a website for residents to visit to ask questions or request a yard sign and also provided copies of mailers sent to residents about the vote.

Smithton's water system consists of one elevated 50,000-gallon welded steel tank, two deep wells and approximately 28,000 feet of 2, 4, and 6 inch water mains. There are approximately 30 fire hydrants. The sewer system consists of a two-cell treatment lagoon and a collection system consisting of approximately 23,000 feet of sewer and

75 manholes. Staff reported that the system appears to be generally well maintained and in good condition. MAWC has proposed several improvements to the water system, including:

1. Installation of a new liquid chlorination system and remote control access to the electrical controls for both wells;
2. The water tower and wells will receive new Supervisory Control and Data Acquisition ("SCADA") controls for remote monitoring to be integrated into MAWC's existing system; and
3. Possibly adding pipe to prevent water from becoming stagnant inside the pipes and replacing existing mains due to the size and/or if a pipe is at its end of life.

MAWC has also proposed several improvements to the sewer system, including:

1. Sewer and manhole lining to address a moderate Inflow and Infiltration issue;
2. Installation of a disinfection system, such as an ultraviolet system, to meet E. coli limits set by the system's DNR permit;
3. Installation of aeration device(s) or a moving bed biofilm reactor (commonly referred to as an MBBR) to address ammonia limits set by the system's DNR permit; and
4. Installation of a SCADA system and new power panels at the lift stations to eliminate safety hazards and to integrate the system into MAWC's SCADA network.

MAWC seeks to establish the ratemaking rate base associated with the Smithton water and sewer assets in this matter pursuant to Section 393.320, RSMo., which states in pertinent part:

The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a “large water public utility” as it is a “public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service.”¹ Smithton is a “small water utility” as it is a “water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.”²

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Smithton water and sewer system and is attached to MAWC’s application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the appraisal report assigns a market value of \$565,000 for the water system and \$670,000 for the sewer system, which combined is \$1,235,000. The agreed upon purchase price between MAWC and Smithton is \$565,000 for the water system and \$1.00 for the sewer system, which combined is \$565,001, which is less than the appraised value and shall constitute the ratemaking base.

¹ Section 393.320.1(1) RSMo.

² Section 393.320.1(2) RSMo.

Staff determined that there were no records maintained by Smithton that would affect Staff's rate base calculation. Staff used asset estimates provided by the Commission's Engineering Analysis Department to calculate an estimated current plant value for each plant asset in each City system. Based upon Staff's analysis, the estimated net book value of assets (rate base) proposed to be purchased from the City of Smithton by MAWC, as of October 31, 2022, is approximately \$708,924 for the water system (which is \$142,924 higher than the proposed purchase price) and \$82,074 for the sewer system (which is \$82,073 higher than the proposed purchase price), for a combined total of \$790,998.

MAWC proposes to apply its existing water rates for the Warrensburg Service Area to the Smithton service area and to utilize the rules governing the rendering of water service currently found in MAWC's water tariff P.S.C. MO No. 13 until rates and rules are modified according to law. Additionally, MAWC proposes to apply its existing sewer rates for the Pettis County Service Area to the Smithton service area and to utilize the rules governing the rendering of sewer service currently found in MAWC's sewer tariff P.S.C. MO No. 26 until rates and rules are modified according to law. The proposed water and sewer rates for the Smithton service area are as follows:

	Customer Charge	Commodity Charge
Water Rates (5/8")	\$9.00	\$6.2469 per 1,000 gal.
Sewer Rates	\$44.03	n/a

On December 29, 2022 the Office of the Public Counsel (OPC) filed a response to Staff's recommendation stating that it has no objection to MAWC acquiring the Smithton systems at the price identified in the purchase agreement, subject to the conditions identified by Staff in its Recommendation. OPC's response noted its concern over a

certain communication between MAWC and Smithton in a July 14, 2020 email that could be interpreted in a way that adds an additional requirement for the appraisers participating in an appraisal pursuant to § 393.320 RSMo. That communication appears to suggest that MAWC must qualify any appraiser that Smithton may choose who does not appear on the list of appraisers MAWC provided. OPC's concern is that this could potentially call into question the independence, impartiality, and objectivity of an appraiser, as well as whether he or she is truly disinterested. OPC seeks no relief related to this concern for this case, but raises its concern about the language for the record. The Commission acknowledges OPC's concern.

Also on December 29, MAWC filed its response to Staff's recommendation, stating that it does not object to Staff's proposed conditions, but expressing the concern that 60 days may not be sufficient for the booking of assets as required in condition 7. The Commission acknowledges MAWC's concern. MAWC also filed a reply to OPC's response on January 6, 2023, explaining that it did not intend to add, or suggest the addition of, any further layer of acceptance of Smithton's choice of appraiser, and that it will remove the reference to qualification from communications with potential sellers going forward.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to MAWC's application or Staff's recommendation.³ No party has requested an evidentiary hearing.⁴ Therefore, the Commission will rule upon MAWC's application.

³ Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

⁴ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”⁵ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁶ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.”

There is a current and future need for water and sewer service. The existing customer base for the water and sewer systems being acquired has both a desire and need for service, as demonstrated by Smithton’s vote to sell the system to MAWC. In addition, there is a need for steps to be taken to update the water and sewer systems to ensure provision of safe and adequate service. MAWC has demonstrated that it is qualified to provide the service, as it is currently providing safe and reliable water service to 475,000 customers and sewer service to approximately 18,000 customers. MAWC has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely

⁵ Section 393.170.3, RSMo.

⁶ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

respond and resolve emergency issues when they arise. MAWC has the financial ability to provide the service, and no external financing approval is being requested.

MAWC's acquisition of fragmented, small water providers by a larger provider with the financial and technical wherewithal to properly operate and maintain systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,⁷ and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.⁸ The Commission finds that granting a CCN to MAWC, with the conditions and actions proposed by Staff, promotes the public interest.

Based on the application and Staff's recommendation, the Commission finds that MAWC has complied with the requirements of Sections 393.140 and 393.170, RSMo. The Commission concludes that it is in the public interest for MAWC to provide water and sewer services to Smithton, subject to the conditions set out by Staff, and that the transaction, including setting the rate making rate base at the purchase price with reasonable and prudent transaction, closing, and transition costs, is in the public interest. On the basis of MAWC's representation that MAWC had no communication with the office of the Commission about the subject matter of the application within one hundred fifty days before filing the application, for good cause shown, the Commission will waive application of the pre-filing notice requirements of Commission Rule 20 CSR 4240-4.017(1). The Commission will grant MAWC's requested CCN, and order the conditions described in Staff's recommendation and memorandum.

⁷ *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

⁸ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

THE COMMISSION ORDERS THAT:

1. MAWC's application for a CCN to own, install, construct, operate, control, manage, and maintain the water and sewer assets, and to provide water and sewer service in the proposed Smithton service area is granted.
2. MAWC's currently approved proposed rates for the water and sewer system service areas are approved.
3. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area.
4. MAWC shall notify the Commission of closing on the assets within five (5) days after the closing.
5. If MAWC does not close on the water and sewer system assets within thirty (30) days following the effective date of this order, MAWC shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur.
6. If MAWC determines that a sale of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets, as appropriate, that would cancel service area maps and descriptions and rate sheets applicable to customers in the Smithton service area.

7. MAWC shall develop a plan to book all of the Smithton plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan shall be submitted to Staff for review within 60 days after closing on the assets.

8. MAWC shall keep financial books and records for plant-in-service and operating expenses for the Smithton service area systems in accordance with the NARUC Uniform System of Accounts.

9. The depreciation rates ordered for MAWC in File No. WR-2020-0344 are hereby adopted for Smithton water and sewer assets.

10. MAWC shall obtain from Smithton, as best as possible prior to or at closing, all records and documents, including, but not limited to, all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions.

11. MAWC shall provide to the Commission's Customer Experience Department ("CXD") an example of its actual communication with the Smithton service area customers regarding its acquisition and operations of the Smithton water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets.

12. MAWC shall, within thirty (30) days of closing on the assets, distribute to the Smithton service area customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3).

13. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets.

14. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Smithton service area customers.

15. MAWC shall include the Smithton service area customers in its established monthly reporting to the Commission Customer Experience Department Staff (CXD Staff) on customer service and billing issues, on an ongoing basis, after closing on the assets.

16. MAWC shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

17. Prior to the time of the closing of all assets in this case, the City must have recorded an easement for the parcel that Well #2 and its associated assets sit on.

18. MAWC shall file notice in this case once the conditions in Ordered Paragraphs 1-17 above have been completed.

19. Pursuant to Section 393.320, RSMo., the purchase price for each system, along with reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base for the Smithton water and sewer systems.

20. The pre-filing notice requirement contained in Commission Rule 20 CSR 4240-4.017(1) are waived.

21. This order shall become effective on February 10, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Keeling, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence)
 Rivers Utility Operating Company, Inc., for)
 Certificates of Convenience and Necessity to) **File No. WA-2023-0092**
 Provide Water and Sewer Service in an Area)
 of St. Charles County, Missouri (Stone Ridge)
 Meadows))

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.1. Public interest

§45. Water

§47. Sewers

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§45. Water**§47. Sewers**

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§2. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day
of January, 2023.

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc., for)
Certificates of Convenience and Necessity to) **File No. WA-2023-0092**
Provide Water and Sewer Service in an Area)
of St. Charles County, Missouri (Stone Ridge)
Meadows))

**ORDER APPROVING ACQUISITION OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: January 19, 2023

Effective Date: February 18, 2023

On September 9, 2022,¹ Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed applications that sought permission and approval to acquire all or substantially all of the water and sewer utility assets currently owned by the Stone Ridge Meadows Home Owners Association, Inc. (Stone Ridge) and for certificates of convenience and necessity (CCN) to install, own, operate, maintain, control, and manage Stone Ridge's water and sewer systems, which are currently not regulated by the Commission. Stone Ridge provides water and sewer services to approximately 18 single family homes in St. Charles County, Missouri.

Confluence Rivers' applications regarding the Stone Ridge water and sewer systems were assigned File No. WA-2023-0092 and File No. SA-2023-0093, respectively. On September 15, the Commission consolidated the two cases and designated File No. WA-2023-0092 as the lead case.

¹ Unless otherwise noted, all dates refer to the year 2022.

In its applications to the Commission, Confluence Rivers requested waiver of the 60-day notice of case filing requirement.²

The Commission issued notice and set a deadline for intervention requests, but received no requests to intervene. On December 22, the Staff of the Commission (Staff) filed its recommendation to approve the acquisition of the water and sewer systems and grant CCNs, subject to certain conditions. On January 3, 2023, Confluence Rivers filed a response to Staff's recommendation in which it stated that it had no objection to Staff's proposed conditions.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.³ Thus, the Commission will make a determination based on the verified applications, Staff recommendation, and the response to Staff's recommendation filed by Confluence Rivers.

Confluence Rivers is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. Confluence Rivers currently provides water service to approximately 4,400 customers and sewer service to approximately 4,600 customers in service areas throughout Missouri pursuant to CCNs previously granted by the Commission.

Stone Ridge is a Missouri nonprofit corporation that provides water and sewer service to approximately 18 residential connections (single family homes) in St. Charles County, Missouri. On March 28, Central States Water Resources, Inc. (CSWR) entered

² Commission Rule 20 CSR 4240-4.017(1).

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

into an *Agreement for Sale and Continued Operation of Utility System* with Stone Ridge in which CSWR would purchase all or substantially all of the water and sewer system assets of Stone Ridge, then assign its rights under the agreement to Confluence Rivers at closing. Confluence Rivers is a subsidiary of CSWR.

Subsection 393.170.2, RSMo (Supp. 2022), requires Confluence Rivers to have CCNs, granted by the Commission, prior to providing water or sewer service in the Stone Ridge service area.

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”⁴ The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁵ It is within the Commission’s discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁶ Subsection 393.170.3 also permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Commission has stated five criteria that it uses to determine necessity or convenience:

1. There must be a need for the service;
2. The applicant must be qualified to provide the service;

⁴ Section 393.170.3, RSMo (Supp. 2021).

⁵ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁶ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.⁷

On December 22, Staff filed its recommendation with an attached memorandum. The recommendation concludes that Confluence Rivers' applications satisfy these standards, which are often referred to as the "Tartan" criteria or factors.

In its applications, Confluence Rivers states that there is no other same or similar water or sewer services available in the area served by Stone Ridge. Staff concludes that the existing Stone Ridge customers have a current and future desire and need for water and sewer services. Staff advises that, as an existing water and sewer corporation providing service to over 4,400 water customers and over 4,600 sewer customers, Confluence Rivers is qualified to provide the services.

Staff reports that Confluence Rivers anticipates no need for external financing to acquire the Stone Ridge systems and has the financial capacity to acquire the systems. The feasibility of Confluence Rivers' providing water and sewer service in the acquired service area is supported by Confluence Rivers demonstrating, over several years, that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expand existing systems, to plan and undertake scheduled capital improvements, and to timely respond and resolve emergency issues when such situations arise.

Staff reports that the improvements proposed by Confluence Rivers would lead to enhanced service for the current Stone Ridge customers, and Confluence Rivers has

⁷ *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

demonstrated the ability to provide safe and adequate service. Staff concludes that the public interest would be promoted by Confluence Rivers taking over operation of the Stone Ridge water and sewer systems.

The Commission finds that there is a need for water and sewer service in the Stone Ridge subdivision service area and Confluence Rivers is qualified to provide that service. The Commission finds that Confluence Rivers has the financial ability to acquire the Stone Ridge water and sewer systems and adequately operate them in the future and that it is economically feasible for Confluence Rivers to do so. The Commission further finds that granting the CCNs, with the reasonable and necessary conditions proposed by Staff and agreed to by Confluence Rivers, will promote the public interest.

The Commission finds that Confluence Rivers' ownership and operation of the Stone Ridge water and sewer systems is necessary and convenient for the public service. Therefore, the Commission will grant Confluence Rivers CCNs for the service areas currently served by those systems. No objections to Staff's recommended conditions were received, and the Commission finds that Staff's conditions are reasonable and necessary. Therefore, the Commission will grant the CCNs, subject to those conditions.

Confluence Rivers' applications also asked the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). The Commission finds good cause exists for waiver based on Confluence Rivers' verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its applications.

THE COMMISSION ORDERS THAT:

1. The 60-day notice of case filing requirement is waived for good cause found, pursuant to 20 CSR 4240-4.017(1)(D).
2. Confluence Rivers is granted permission to acquire all or substantially all of the water and sewer utility assets of Stone Ridge pursuant to an *Agreement for Sale and Continued Operation of Utility System* dated March 28, 2022, between Stone Ridge and CSWR.
3. Upon closing, Confluence Rivers is granted certificates of convenience and necessity to provide water and sewer service in the Stone Ridge service area, subject to the conditions contained in Staff's recommendation, as set out below:
 - a. Confluence Rivers shall charge customers \$27.50/month for water service, subject to the rules governing water service currently found in Confluence Rivers' water tariff P.S.C. MO No. 12;
 - b. Confluence Rivers shall charge customers \$27.50/month for sewer service, subject to the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13;
 - c. Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include a revised service area map, service area written description, rates and charges;
 - d. Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;
 - e. If closing on the water and sewer system assets does not take place within 30 days following the effective date of this Commission order, Confluence Rivers shall submit a status report within five days after this 30-day period regarding the status of closing and additional status reports within five days after each additional 30-day period until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;

- f. If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Stone Ridge service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Stone Ridge service area in both the water and sewer tariffs;
- g. Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
- h. Confluence Rivers shall adopt the depreciation rates ordered for it in File No. WA-2020-0053 for the Stone Ridge assets;
- i. Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the water and sewer customers in the acquired area;
- j. Confluence Rivers shall distribute to the Stone Ridge customers an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rules in 20 CSR 4240-13 within 30 days of closing on the assets;
- k. Within ten days after closing on the assets, Confluence Rivers shall provide to Staff's Customer Experience Department (CXD) an example of its actual communication with the Stone Ridge customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach Confluence Rivers;
- l. Confluence Rivers shall provide to the CXD staff a sample of five billing statements from the first three month's billing of the former Stone Ridge customers within ten days of the billings;
- m. Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing within ten days after such communications and notifications are completed;

- n. After closing on the Stone Ridge assets, Confluence Rivers shall include, on an ongoing basis, the former Stone Ridge water and sewer customers in its established monthly reporting to the CXD on customer service and billing issues; and
 - o. Confluence Rivers shall file notice with the Commission once the above conditions have been completed.
4. Confluence Rivers is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the applications.
5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to Confluence Rivers, including proposed expenditures related to the certificated service area as discussed in the body of this order, in any later proceeding.
6. This order shall become effective on February 18, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Acquisition of Union	)	
Electric Company d/b/a Ameren Missouri	)	<u>File No. EA-2022-0245</u>
for Approval of a Subscription-Based	)	
Renewable Energy Program	)	

ORDER DENYING REQUEST FOR PROTECTIVE ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§24. Procedures, evidence and proof

§29. Discovery

The Commission found that its rule regarding an informal discovery dispute resolution process must be followed before any written discovery motion is filed.

§32. Confidential evidence

The Commission found that it has a rule regarding protecting confidential information which sets out the procedure for the responding party to designate data request responses as “confidential” without the need for a Commission order.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day
of January, 2023.

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	<u>File No. EA-2022-0245</u>
for Approval of a Subscription-Based	)	
Renewable Energy Program	)	

ORDER DENYING REQUEST FOR PROTECTIVE ORDER

Issue Date: January 25, 2023

Effective Date: January 25, 2023

On January 6, 2023, the Staff of the Commission (Staff) filed its objections to Union Electric Company d/b/a Ameren Missouri's (Ameren) Data Request 1.1. As part of its pleading, Staff requested the Commission issue a "protective order that Staff not be required to answer or respond to Ameren Missouri's data request."¹ No response to Staff's request has been filed.

The Commission's rule regarding data requests is 20 CSR 4240-2.090(2). Subsection (D) of that rule provides that if a party that receives a data request objects to that data request, it is to serve its objections on the requesting party. The rule does not require that the objection be filed in the Commission's case file. Unless the requesting party decides to file a motion to compel responses to the objected to data request, neither the data request, nor the objections will come to the attention of the Commission in the case. If a motion to compel is filed, the data request and objections could be put before the Commission for resolution at that time. The Commission also has a rule regarding the

¹ *Staff's Objections to Ameren's First Set of Data Requests to Staff*, (filed January 6, 2023), p. 1.

informal discovery dispute resolution process 20 CSR 4240-2.090(8) which must be followed before any written discovery motion is filed.

The Commission also has a rule regarding protecting confidential information—20 CSR 4240-2.135. Section (3) of that rule sets out the procedure for requesting a protective order, Section (4) sets out the procedure for getting greater than “confidential” protection for information, and Section (5) sets out the procedure for the responding party to designate data request responses as “confidential” without the need for a Commission order.

Although Staff used the term “protective order,” Staff is requesting a Commission order stating that it does not have to “answer or respond” the data request. Staff’s request is premature. Ameren Missouri has made a data request and Staff has answered with objections to that request. Ameren Missouri has not taken any action as set out in 20 CSR 4240-2.090(8) to compel Staff to answer. Thus, the Commission will not preemptively rule that the information is protected. The Commission will deny Staff’s request as premature.

THE COMMISSION ORDERS THAT:

1. Staff’s request that the Commission issue a protective order is denied.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Co-Mo)
Electric Cooperative for Approval of) **File No. EO-2022-0190**
Designated Service Boundaries Within)
Portions of Cooper County, Missouri)

In the Matter of the Joint Application of Co-Mo)
Electric Cooperative and Union Electric)
Company d/b/a Ameren Missouri for an Order) **File No. EO-2022-0332**
Approving a Territorial Agreement in Cooper,)
Cole, and Moniteau Counties, Missouri)

REPORT AND ORDER APPROVING STIPULATION AND AGREEMENT AND TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

§11. Territorial agreements

The Commission analyzed the seven factors set forth in Section 386.800.2, RSMo (Supp. 2022) to analyze a territorial agreement regarding the provision of electric service to an area not currently served within city limits.

§6. Territorial agreements

§11. Territorial agreements

The Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

§6. Territorial agreements

§11. Territorial agreements

The Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no party requested a hearing, the Commission may make a determination without an evidentiary hearing.

§6. Territorial agreements

§11. Territorial agreements

The Commission was not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the territorial agreement.

EVIDENCE, PRACTICE AND PROCEDURE**§6. Weight, effect and sufficiency**

The Commission was not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the territorial agreement.

§8. Stipulation**§30. Settlement procedures**

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the agreement as unanimous.

§23. Notice and hearing

The Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no party requested a hearing, the Commission may make a determination without an evidentiary hearing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day
of January, 2023.

In the Matter of the Application of Co-Mo)
Electric Cooperative for Approval of) **File No. EO-2022-0190**
Designated Service Boundaries Within)
Portions of Cooper County, Missouri)

In the Matter of the Joint Application of Co-Mo)
Electric Cooperative and Union Electric)
Company d/b/a Ameren Missouri for an Order) **File No. EO-2022-0332**
Approving a Territorial Agreement in Cooper,)
Cole, and Moniteau Counties, Missouri)

**REPORT AND ORDER APPROVING STIPULATION AND AGREEMENT
AND TERRITORIAL AGREEMENT**

Issue Date: January 25, 2023

Effective Date: February 4, 2023

This order approves a stipulation and agreement, and a territorial agreement (TA) and addendum between Union Electric Company, d/b/a Ameren Missouri and Co-Mo Electric Cooperative, Inc. (Co-Mo) that will make Co-Mo the exclusive electric service provider for the Fox Hollow subdivision in Cooper County, Missouri. The TA additionally defines service areas between the joint applicants in Cooper, Cole, and Moniteau Counties, Missouri.

Findings of Fact

1. Ameren Missouri is a corporation engaged in the generation, transmission, distribution, and sale of electricity in portions of Missouri. Ameren Missouri is an “electrical corporation” and “public utility” under Section 386.020(15) and (43), RSMo and is subject

to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo.¹

2. Co-Mo is a rural electric cooperative organized under Chapter 394 RSMo to provide electric service to its members in all or parts of nine Missouri counties, including Cole, Cooper, and Moniteau Counties. Cole, Cooper, and Moniteau Counties are the subject of the TA. The Commission has limited jurisdiction over electric cooperatives, but for this case Co-Mo is subject to the jurisdiction of the Commission under Section 386.800 and 394.312 RSMo.²

3. Both Ameren Missouri and Co-Mo are authorized by law to provide electric service within the State of Missouri, including in portions of Cooper, Cole, and Moniteau Counties.³

4. On December 3, 2021, Co-Mo received a letter from Troy Thurman, of Troy Thurman Construction, asking that Co-Mo be the electrical supplier to a property adjacent to the City of Boonville (Boonville) known as the Fox Hollow subdivision. The Fox Hollow property is solely owned by Troy Thurman Construction and no electric supplier is providing permanent electric service to the property.⁴ Fox Hollow is planned to consist of approximately four hundred and forty-six residential structures once completed.⁵

¹ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum (November 23, 2022).

² File No. EO-2022-0190 and File No. EO-2022-0332, Staff Recommendation (November 23, 2022).

³ File No. EO-2022-0190, Stipulation and Agreement (May 27, 2022), Section 394.080 RSMo, Ameren Missouri tariff PSC No. 6, Original Sheet Nos. 13–15 and 29.

⁴ File No. EO-2022-0190, Application, Appendix B. (January 18, 2022)

⁵ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum (November 23, 2022).

5. The Fox Hollow subdivision was voluntarily annexed by Boonville effective January 18, 2022.⁶

6. On January 18, 2022, Co-Mo filed an application for approval of designated service boundaries within portions of Cooper County, Missouri, to allow Co-Mo to provide electric service to a new development located on land recently annexed into the Boonville.⁷ The Commission opened File No. EO-2022-0190.

7. Boonville does not own or operate a municipal utility.⁸

8. Ameren Missouri currently provides electric service to Boonville.⁹

9. The Fox Hollow subdivision would be in the electric service territory of Ameren Missouri pursuant to a franchise agreement between Boonville and Ameren Missouri.¹⁰

10. On February 14, 2022, Ameren Missouri filed a Motion for Summary Determination. Ameren Missouri's motion alleged that Boonville was within Ameren Missouri's exclusive service territory, including portions of Cooper County, Missouri around Boonville.¹¹

11. The Commission denied Ameren Missouri's motion for summary determination stating that "Ameren Missouri has failed to show that Co-Mo's application is foreclosed as a matter of law, and failed to show that its service territory is exclusive with respect to electric suppliers not regulated by the Commission."¹²

⁶ File No. EO-2022-0190, Application, Appendix C. (January 18, 2022)

⁷ File No. EO-2022-0190, Application (January 18, 2022).

⁸ File No. EO-2022-0190, Ameren Missouri's Motion for Summary Determination (February 14, 2022).

⁹ File No. EO-2022-0190, Application (January 18, 2022).

¹⁰ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum (November 23, 2022).

¹¹ File No. EO-2022-0190, Ameren Missouri's Motion for Summary Determination (February 14, 2022).

¹² File No. EO-2022-0190, Order Denying Motion for Summary Determination (April 6, 2022).

12. On March 2, 2022, the Commission set a procedural schedule, including an evidentiary hearing.¹³

13. On May 27, 2022, Ameren Missouri and Co-Mo submitted a Stipulation and Agreement (Agreement) including a TA. Pursuant to the Agreement Co-Mo would be the exclusive electric service provider for the Fox Hollow subdivision and certain other service areas in Cooper County, Missouri. Also under the Agreement, Ameren Missouri would have certain exclusive service areas in portions of Cooper, Cole, and Moniteau Counties, Missouri.¹⁴ The TA states that Ameren Missouri and Co-Mo agree to prepare an addendum containing a metes and bounds description of the companies' service areas.¹⁵

14. Because the TA addressed additional Missouri counties not originally included in Co-Mo's request, it required additional notice to other electrical suppliers. The Commission opened File No. EO-2022-0332, to address the TA.¹⁶

15. Co-Mo's original request was to provide service to approximately 200 acres in Cooper County, Missouri. The TA includes exclusive service territories in multiple Missouri counties covering approximately 20,000 acres. On July 29, 2022, Staff filed a motion to hold a local public hearing where interested persons and Boonville would have an opportunity to offer comments to the Commission concerning the Agreement and TA.¹⁷

16. Staff filed a motion for an order requiring the parties to be prepared to answer service boundary questions because the parties had not filed a survey designating service area boundary lines. Section 394.312.2, RSMo, requires that

¹³ File No. EO-2022-0190, Order Setting Procedural Schedule (March 2, 2022).

¹⁴ File No. EO-2022-0190, Stipulation and Agreement (May 27, 2022).

¹⁵ File No. EO-2022-0190, Territorial Agreement (May 27, 2022).

¹⁶ File No. EO-2022-0332, Order Directing Notice, a Staff Recommendation, and Setting a Deadline for Intervention (June 1, 2022).

¹⁷ File No. EO-2022-0332, Motion for Local Public Hearing (July 29, 2022).

territorial agreements between rural electric cooperatives and electrical corporations specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement.¹⁸ Ameren Missouri and Co-Mo jointly responded that they did not object to answering boundary questions at the local public hearing¹⁹ and filed a joint submission of legal descriptions and maps of the proposed service area allocations.²⁰

17. Staff also filed a request to suspend the requirement that it file a recommendation about the TA by September 29, 2022. Staff's request stated that Ameren Missouri and Co-Mo would soon to file a pleading setting out an amended TA.²¹

18. The Commission held a virtual local public hearing on September 15, 2022, in which Staff, the joint applicants, and the Office of the Public Counsel participated. At the local public hearing concern was expressed about Boonville's expansion of its airport. Boonville City Administrator, Kate Fjell, stated:

"The city has a master plan which includes the development of new hangars,..., [a] new terminal, [and] additional security lighting. It does not make sense from a safety and security standpoint to have Co-Mo serve these airport expansions when Ameren is already our service provider. In the case of an emergency, time is of the essence and having to contact and coordinate with two utility partners when there are potentially exposed power lines, a fire, tornado damage, et cetera, will create additional challenges hampering first responders' ability to quickly and responsively address any issues."²²

¹⁸ File No. EO-2022-0332, Staff's Motion for Order Requiring Parties to be Prepared to Answer Service Area Boundary Questions at Local Public Hearing/Motion for Expedited Treatment (September 8, 2022).

¹⁹ File No. EO-2022-0332, Joint Response to Staff Motion for Order Requiring Parties to Answer Service Area Boundary Questions at Local Public Hearing (September 12, 2022).

²⁰ File No. EO-2022-0332, Joint Submission of Legal Descriptions (September 12, 2022). Though Ameren Missouri and Co-Mo filed an application on July 1, 2022, for approval of a territorial agreement, the filing of legal descriptions on September 12, 2022, completes the application and triggers the 120 day statutory timeline to issue a Commission order.

²¹ File No. EO-2022-0332, Staff's Request for Suspension of Order to File Recommendation (September 28, 2022).

²² File No. EO-2022-0332, Transcript Vol. 2, Local Public Hearing (October 13, 2022).

19. On October 19, 2022, Ameren Missouri and Co-Mo filed an addendum to the TA addressing concerns expressed at the local public hearing about which electrical provider would serve the airport. The addendum excludes the Boonville Airport property from Co-Mo's service area in Cooper County, Missouri, and includes the Boonville Airport property in Ameren Missouri's service area in Cooper County, Missouri.²³

20. On November 23, 2022, Staff filed a recommendation to approve the TA. Staff also recommended the Commission order Ameren and Co-Mo to amend their verified pleadings as may be necessary to address any change of customer service; or file other pleadings explaining why no such amendment is required; and notify any customer whose service might be changed of that customer's rights and provide Staff with a copy or file a pleading explaining why no such notice is necessary; and file amended tariffs with the Commission as described in Staff's Memorandum.²⁴

21. On December 1, 2022, Ameren Missouri and Co-Mo filed a response to Staff's recommendation. The joint applicants state that no amendment to pleadings is required. Approval will not result in a change of customer service for any customer of either Ameren Missouri or Co-Mo. Further, there is no need to provide notice to a customer whose service might be changed because there will be no change of service.²⁵

22. On December 2, 2022, the Office of the Public Counsel (Public Counsel) filed a response to the TA. Public Counsel raised two concerns about the TA. Public

²³ File No. EO-2022-0190 and File No. EO-2022-0332, Joint Submission of Addendum to Territorial Agreement (October 19, 2022).

²⁴ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum (November 23, 2022).

²⁵ File No. EO-2022-0190 and File No. EO-2022-0332, Joint Response to Staff's Recommendation (December 1, 2022).

Counsel is concerned that Co-Mo and Ameren Missouri have included an additional 19,800 acres across Cooper, Cole, and Moniteau Counties not related to the Fox Hollow subdivision, and that the landowners in those 19,800 acres are not aware of the TA that will determine their electric provider.²⁶

23. Pursuant to the Commission's July 5, 2022, order notice of the TA case was provided to the county commissioners, general assembly members, and newspaper and other media for Cooper, Cole, and Moniteau Counties, Missouri.²⁷

24. Pursuant to the Commission's July 5, 2022, order any person or entity had 30 days to intervene and become a party in the TA case.²⁸

25. The Agreement resolves all of the outstanding issues in File No. EO-2022-0190. The Agreement asks that the Commission approve the TA as part of the Agreement.²⁹

26. The TA does not require transfer of any facilities and may only transfer one or two customers between the Co-Mo and Ameren Missouri.³⁰

27. There are both positives and negatives to being served by an electrical corporation of electric cooperative. Staff's analysis of the rates, terms, and conditions do not favor either supplier.³¹

²⁶ File Nos. EO-2022-0190 and EO-2022-0332, Public Counsel's Response to Proposed Territorial Agreement (December 2, 2022).

²⁷ File No. EO-2022-0332, Second Order Directing Notice, Requiring a Staff Recommendation, and Setting a Deadline for Intervention (July 5, 2022).

²⁸ File No. EO-2022-0332, Second Order Directing Notice, Requiring a Staff Recommendation, and Setting a Deadline for Intervention (July 5, 2022).

²⁹ File No. EO-2022-0190, Stipulation and Agreement (May 27, 2022).

³⁰ File No. EO-2022-0332, Joint Application for Approval of Territorial Agreement (July 1, 2022). While not known at the time the Joint Applicants filed their application or evidenced outside of a comment in Staff's Recommendation, it is possible that the TA may transfer one or two customers from Ameren to Co-Mo.

³¹ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

28. Staff's analysis of the economic impact to the companies favors Co-Mo, because while both companies would benefit from additional customers, the impact would be greater for Co-Mo.³²

29. Staff's analysis of the operational abilities of the companies does not favor either supplier.³³

30. Staff's analysis of wasteful duplication slightly favors Ameren Missouri, but both companies have facilities in the area around the Fox Hollow subdivision.³⁴

31. Staff's analysis concerning the minimization of unnecessary encumbrances does not favor either company. Both companies have the necessary permits, easements, and franchise agreements to serve the Fox Hollow Subdivision.³⁵

32. Staff's analysis concerning prevention of waste does not favor either company, because both companies have diverse portfolios for generation and include renewable energy generation sources.³⁶

33. Based on the information provided in Co-Mo's Application for Approval of Designated Service Boundaries within Portions of Cooper County, the Agreement, the TA and Addendum, and Staff's recommendation, the Commission finds the TA establishes exclusive service territories for the two electric suppliers. The establishment of exclusive service territories will prevent any potential duplication of electric service facilities. The

³² File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

³³ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

³⁴ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

³⁵ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

³⁶ File No. EO-2022-0190 and File No. EO-2022-0332, Staff's Recommendation and Memorandum, attached Rebuttal Testimony of David Buttig (November 23, 2022).

Commission finds that the designation of the electric service area stated in the TA and addendum is in the public interest and that the TA is not detrimental to the public interest.

Conclusions of Law

A. Section 386.800.2, RSMo provides:

Any municipally owned electric utility may extend, pursuant to lawful annexation, its electric service territory to include areas where another electric supplier currently is not providing permanent service to a structure. If a rural electric cooperative has existing electric service facilities with adequate and necessary service capability located in or within one mile outside the boundaries of the area proposed to be annexed, a majority of the existing developers, landowners, or prospective electric customers in the area proposed to be annexed may, anytime within forty-five days prior to the effective date of the annexation, submit a written request to the governing body of the annexing municipality to invoke mandatory good faith negotiations under section 394.312 to determine which electric service supplier is best suited to serve all or portions of the newly annexed area. In such negotiations the following factors shall be considered, at a minimum:

- (1) The preference of landowners and prospective electric customers;
- (2) The rates, terms, and conditions of service of the electric service suppliers;
- (3) The economic impact on the electric service suppliers;
- (4) Each electric service supplier's operational ability to serve all or portions of the annexed area within three years of the date the annexation becomes effective;
- (5) Avoiding the wasteful duplication of electric facilities;

(6) Minimizing unnecessary encumbrances on the property and landscape within the area to be annexed; and

(7) Preventing the waste of materials and natural resources.

B. Section 386.800.3, RSMo states: In the event an electrical corporation rather than a municipally owned electric utility lawfully is providing electric service in the municipality, all the provisions of subsection 2 of this section shall apply equally as if the electrical corporation were a municipally owned utility, except that if the electrical corporation and the rural electric cooperative are unable to negotiate a territorial agreement pursuant to section 394.312 within forty-five days, then either electric service supplier may file an application with the commission for an order determining which electric service supplier should serve, in whole or in part, the area to be annexed.

C. Section 394.312, RSMo, gives the Commission jurisdiction over electric service territorial agreements, including those between electrical corporations and rural electric cooperatives.³⁷

D. Pursuant to subsections 394.312.3 and .5, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

E. Section 394.312.5, RSMo, provides the Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and

³⁷ Section 394.312.1 and .4, RSMo.

no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.³⁸

Decision

The seven factors set forth in Section 386.800.2 apply to the 216 acre Fox Hollow subdivision annexed by Boonville. With respect to the remaining 19,800 acres, those factors do not apply, and the only question is whether the TA is detrimental to the public interest. Having defined boundaries between service providers in rural areas where no service currently exists, benefits both Co-Mo and Ameren Missouri. The defined boundaries assist both utilities in planning for the future and reduce the likelihood of service duplication. The Commission is not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the TA. If future electric customers desire a different service provider, the Commission provides a mechanism to petition the Commission for a change of service provider.

Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that the material facts in this matter demonstrate the electric service area designation made in the Agreement, the TA, and the addendum (All are attached to this order and incorporated by reference) is in the public interest and that the TA, in total, is not detrimental to the public interest. The Commission also considered the factors set forth in Section 386.800.2, and approves allowing Co-Mo to provide electrical service to the Fox Hollow subdivision.

³⁸ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement.³⁹ If no party timely objects, the Commission may treat the Agreement as unanimous.⁴⁰ More than seven days have passed since the agreement was filed and no party objected. Thus, the Commission will treat the Agreement as unanimous. After reviewing the Agreement, the Commission determines that its terms are a reasonable resolution of the issues therein. The Commission will approve the Agreement and the TA and its Addendum. The Commission makes no rate-making determinations in connection with its approval. So that the parties can expedite the filing of compliance tariffs, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The Stipulation and Agreement between Ameren Missouri and Co-Mo is approved. The signatory parties are ordered to comply with the terms of the Agreement. A copy of the Agreement and its attachments are attached to this order and incorporated by reference.
2. The Territorial Agreement and its addendum are approved. A copy of the Territorial Agreement and addendum are attached to this order and incorporated by reference.
3. Ameren Missouri and Co-Mo are authorized to perform the Territorial Agreement and all legal acts and things necessary to performance.

³⁹ 20 CSR 4240-2.115(2)(B).

⁴⁰ 20 CSR 4240-2.115(2)(C).

4. If necessary, Ameren Missouri and Co-Mo shall inform any customers who are transferred as a result of the Territorial Agreement of their rights or of any changes in service.

5. No later than February 15, 2023, Ameren Missouri shall file compliance tariff sheets describing the modification of its service territory which include a metes and bounds legal description of the affected parcels.

6. This order shall become effective on February 4, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

FIRST ADDENDUM
TO THE
TERRITORIAL AGREEMENT

THIS ADDENDUM is made and entered into as of the 19th day of October, 2022, by and between UNION ELECTRIC COMPANY d/b/a/ Ameren Missouri ("Company") and CO-MO ELECTRIC COOPERATIVE, INC. ("Cooperative"). Company and Cooperative are sometimes referred to herein singularly as a "Party" and collectively as the "Parties."

RECITALS

- A. Company and Cooperative are parties to a Territorial Agreement dated May 27, 2022 (the Agreement"), the approval of which is pending in Missouri Public Service Commission ("Commission") File No. EO-2022-0332;
- B. The precise land areas covered by the Territorial Agreement are described in detail in the legal descriptions and accompanying maps submitted in said Commission File on September 12, 2022 in the Parties' Joint Submission of Legal Descriptions ("Joint Submission");
- C. One of the areas allocated to Cooperative, identified as Co-Mo Area 2 in the Joint Submission, includes the property of the Boonville City Airport owned by the City of Boonville (the "Airport") and located in Cooper County, Missouri;
- D. Given that Company serves the Airport and that the Airport could expand in the future, Company and Cooperative have agreed that the Airport property, as it now exists or may be expanded in the future, should not be included in Co-Mo Area 2 but should instead be allocated to and served by Company, and the Parties therefore desire to amend the Agreement to so provide.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

- 1. Modification of Territorial Agreement as to Existing Airport.** Exhibit A to the Agreement is replaced and superseded by **First Amended Exhibit A**, attached hereto and incorporated herein by this reference. First Amended Exhibit A also replaces and supersedes the maps and legal

descriptions contained in the Joint Submission. For avoidance of doubt, the only difference between the maps and legal descriptions contained in the Joint Submission and the maps and legal descriptions contained in First Amended Exhibit A is to remove the Airport property from Co-Mo Area 3 and add it to Ameren Area 1, both in Cooper County, Missouri.

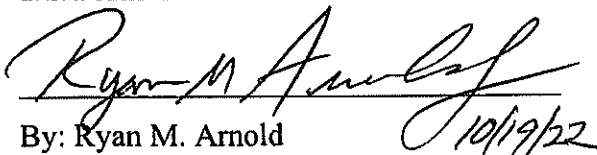
2. Modification of Territorial Agreement as to Future Airport Expansions. Should the City acquire, by purchase, lease, or easement, additional property used or to be used by the City to expand the operations of the airport now known as the Jesse Virel Memorial Airport, the Parties agree that that such additional property should be allocated to Ameren Missouri such that Ameren Missouri shall be the exclusive electric service provider for all structures and other electric service needs at such airport, as it may be expanded. The Parties shall file legal descriptions with the Commission if any such expansion(s) occur.

3. Lack of Approval or Termination - If the Commission or any other regulatory authority having jurisdiction does not approve the Agreement, including this First Addendum, this First Addendum shall be nullified and of no legal effect between the parties.

4. No Other Amendment. Except as modified herein, the terms and conditions of the Agreement remain in force and effect according to their terms.

IN WITNESS WHEREOF, the parties have executed this Addendum on the date first above written.

Union Electric
d/b/a Ameren Missouri


By: Ryan M. Arnold
Title: Vice-President of Div. Operations

Co-Mo Electric Cooperative


By: Aaron Bradshaw
Title: CEO/General Manager

Cooper County Co-MO Boundary Description

(Ameren Area 1)

Sections 5, 6, 7, 8 & 17 and U.S. Survey Nos. 2545, 2734, 2927, 2750, 2878 & 2591, Township 48 North, Range 16 West, Sections 1, 2, 3, 4, 8, 9, 10, 11 & 12 and U.S. Survey No. 2747, Township 48 North, Range 17 West and Sections 34, 35 & 36 and U.S. Survey Nos. 2475, 2537, 2845 & 2880, Township 49 North, Range 17 West and being more particularly described as follows: Beginning at the intersection of the Eastern boundary line of a tract of land conveyed to Dale J. Wassmann and Ashley N. Wassmann, his wife, by deed recorded in Book 536, Page 134 in the Cooper County, Missouri land records with the North right-of-way line of line of Interstate Highway '70'; Thence Northerly along said Eastern boundary line of said Wassmann tract to the North line of the Southeast Quarter of the Southwest Quarter of said Section 9 and being the Northeast corner of said Wassmann tract; Thence Westerly along said North line and the North line of the Southwest Quarter of the Southwest Quarter of said Section 9 to the East line of aforesaid Section 8, Township 48 North, Range 17 West and being the Northwest corner of said Southwest Quarter of the Southwest Quarter of said Section 8; Thence Northerly along said East line of said Section 8 to the intersection of said East line with the South right-of-way line of Old Highway '40'; Thence Southwesterly along said right-of-way line to its intersection with the Easterly projection of the North line of a tract of land conveyed to Tatum Martin by deed recorded as Document No. 2020-0933 in the Cooper County, Missouri land records; Thence Westerly along said Easterly projection and said North line of said Martin tract to the Northwest corner thereof; Thence Southerly along the West line of said Martin tract to the Easterly projection of the South line of Lot 4 of Timberlake Estates Plat 1 per plat recorded in Plat Book 7, Page 425 in the Cooper County, Missouri land records; Thence Westerly along said Easterly projection to the West line of Timberlake Court at the Southeast corner of said Lot 4 of Timberlake Estates Plat 1; Thence Westerly along the aforesaid South line of said Lot 4 and Lots 3, 2 & 1 to the Southwest corner of said Lot 1; Thence Northerly along the West line of said Lot 1 to the South line of Lot 38 of said Timberlake Estates Plat 1 and being the Northwest corner of said Lot 1; Thence Westerly along said South line of said Lot 38 to the Southeast corner of Lot 46 of Timberlake Estates Plat 2 per plat recorded in Plat Book 8, Page 12 in the Cooper County, Missouri land records and being the Southwest corner of said Lot 38; Thence Westerly along the South line of said Lot 46 to the Northeast corner of Lot 39 of said Timberlake Estates Plat 1 and being the Southwest corner of said Lot 46; Thence Southerly along the East line of said Lot 39 to the Southeast corner thereof; Thence Westerly along the South line of said Lot 39, 40 and 41 to the Southwest corner of said Lot 41; Thence Westerly along the Westerly projection of said South line of said Lot 41 to the Southeast corner of Lot 63 of said Timberlake Estates – Plat 2; Thence continuing Westerly along said South line of said Timberlake Estates Plat 2 along the South line of said Lot 63 and the South line of Lots 65 and 64 to the Southwest corner of said Timberlake Estates Plat 2 and being the Southwest corner of said Lot 64; Thence Northerly along the Western boundary line of said Timberlake Estates Plat 2 along the West line of said Lot 64 to the Northwest corner thereof; Thence continue Northerly along said Western boundary line of said Timberlake Estates Plat 2 and the Northerly projection of the West line of said Lot 64 to the most Southern corner of Lot 78 of said Timberlake Estates Plat 2; Thence continuing Northerly along said Western boundary of said Timberlake Estates Plat 2 along the West line of said Lot 78 and the West line of Lots 77, 76 and 75 to the most Southern corner of Lot 79A of the Replat of Lot 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates – Plat 2 per plat recorded in Plat Book 8, Page 180 in the Cooper County, Missouri land records and being the most Western corner of said Lot 75; Thence Northerly along the West line of said Replat of Lot 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates – Plat 2 along the West line of said Lot 79A to the most Western corner of Lot 80A of said Replat of Lot 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates – Plat 2 and being the Northwest corner of said Lot 79A; Thence Easterly and

Northerly along the Western boundary line of said Lot 80A to the Northwest corner thereof; Thence Easterly along the Northern boundary line of said Replat of Lot 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates – Plat 2 along the Northern line of said Lot 80A and Lots 81A and 82A to the Northwest corner of Lot 73 of aforesaid Timberlake Estates Plat 2 recorded in Plat Book 8, Page 12 and being the most Northern corner of said Lot 82A; Thence Northeasterly along the Northern boundary line of said Timberlake Estates Plat 2 along the Northwest line of said Lot 73 and Lot 72 of said Timberlake Estates Plat 2 to the most Northern corner of said Lot 72; Thence Southeasterly along said Northern boundary of said Timberlake Estates – Plat 2 along the Northeasterly line of said Lot 72 and Lot 71 of said Timberlake Estates – Plat 2 to the Northwest corner of Lot 70 of said Timberlake Estates – Plat 2 and being the Northeast corner of said Lot 71; Thence continuing Northeasterly along said Northern boundary line of said Timberlake Estates Plat 2 along the Northwest line of said Lot 70 and Lots 58, 57, 56, 55, and 54 to the most Northern corner of Lot 53 of said Timberlake Estates Plat 2 and being the most Eastern corner of said Lot 54; Thence southerly along the Eastern boundary line of said Timberlake Estates Plat 2 along the East line of said Lot 53 and the Eastern boundary line of Lot 52 of said Timberlake Estates Plat 2 to the most Eastern corner of Lot 52; Thence continuing said Eastern boundary line of said Lot 52 and the Southeast line of Lots 51 and 50 to the most Southern corner of Tract A of aforesaid Timberlake Estates – Plat 1 per plat recorded in Plat Book 7, Page 425 and being the most Southern corner of said Lot 50; Thence Northeasterly along the Southern boundary of said Tract A to the Northeast corner of Lot 23 of said Timberlake Estates Plat 1; Thence continuing Northeasterly along said Southern boundary line of said Tract A along the Easterly projection of the North line of said Lot 23 of Timberlake Estates Plat 1 to the Northwest corner of Lot 22 of said Timberlake Estates Plat 1; Thence continuing along said Southern boundary line of said Tract A of Timberlake Estates Plat 1 to the most Southeast corner of Tract B of said Timberlake Estates Plat 1; Thence Northeasterly along the Southern boundary line of said Tract B to the East line of said Timberlake Estates Plat 1 and being the Northeast corner of Lot 17 of said Timberlake Estates Plat 1; Thence Northerly along said East line to the Northwest corner of a tract of land conveyed to Duane A. McGuire and Debbie A. McGuire, his wife, by deed recorded in Book 209, Page 309 in the Cooper County, Missouri land records; Thence Easterly along the North line of said McGuire tract and the North line of a tract of land conveyed to Geoffrey D. Haning and Virginia I. Haning Revocable Trust, dated March 8, 1999 by deed recorded in Book 324, Page 76 in said land records to the Northwest corner of a tract of land conveyed to Steven C. Helt by deed recorded in Book 582, Page 672 in the Cooper County, Missouri land records and being the Northeast corner of said Haning tract; Thence continuing Easterly along the North line of said Helt tract to the Northwest corner of a tract of land conveyed to Lance M. Griffin and Amy N. Griffin-Frevert by deed recorded as Document No. 2021-1239 in the Cooper County, Missouri land records; Thence Southeasterly along the Southwest line of said Griffin/Griffin-Frevert tract to the North right-of-way line of Old U.S. Highway '40' and being the Southwest corner of said Griffin/Griffin-Frevert tract; Thence Northeasterly along said right-of-way line to the intersection of said right-of-way line with the West line of the Northeast Quarter of aforesaid Section 9, Township 48 North, Range 17 West and being the Southwest corner of a tract of land conveyed to Dicky D. Smalley and Kristi Smalley, his wife, by deed recorded in Book 323, Page 711 in the Cooper County, Missouri land records; Thence Northerly along said West line of said Northeast Quarter of said Section 9 to the Northwest corner of said Smalley tract; Thence Northeasterly along the Northwest line of said Smalley tract to the Northeast corner thereof; Thence Southeasterly along the Northeast line of said Smalley tract to the aforesaid North right-of-way line of U.S. Highway '40'; Thence Northeasterly along said right-of-way line to the most Southern corner of a tract of land conveyed to Public Water Supply District #2 by deed recorded in Book 149, Page 728 in the Cooper County, Missouri land records; Thence Northwesterly along the Southwest line of said Public Water Supply District #2 tract and the Southwest line of a tract of land conveyed to Lance M. Griffin and Blake G. Frevert by deed recorded as Document No. 2017-0687 in said land records to the South line of

aforesaid Section 4, Township 48 North, Range 17 West and being the Northwest corner of said Griffin/Frevert tract; Thence Westerly along said South line of said Section 4 to the Southwest corner of the Southeast Quarter of said Section 4; Thence Northerly along the West line of said Southeast Quarter of said Section 4 to the Southwest corner of a tract of land conveyed to Kathy M. Schneider by deed recorded as Document No. 2013-3446 in the Cooper County, Missouri land records; Thence Easterly along the South line of said Schneider tract to the East line of the West Half of the East Half of the aforesaid Southeast Quarter of Section 4 and being the Southeast corner of said Schneider tract; Thence Northerly along said East line to the Southeast corner of a tract of land conveyed to Eric Parent and Patricia Parent, his wife, by deed recorded in Book 439, Page 502 in the Cooper County, Missouri land records; Thence Westerly along the South line of said Parent tract to the Southwest corner thereof; Thence Northerly along the Western boundary line of said Parent tract to the Southeast corner of a tract of land conveyed to Joey G. Bishop and Stacey M. Bishop, his wife, by deed recorded as Document No. 2013-1526 in the Cooper County, Missouri land records; Thence Westerly along the South line of said Bishop tract to the Southwest corner thereof; Thence Northerly along the West line of said Bishop tract and the Northerly projection thereof to the North line of Santa Fe Road in the Northeast Quarter of aforesaid Section 4, Township 48 North, Range 17 West; Thence Northeasterly along said North line of said Santa Fe Road to the most Southern corner of Dunaway Ridge Subdivision per plat recorded in Plat Book 7, Page 292 in the Cooper County, Missouri land records and being the most Southern corner of Lot 8 of said Dunaway Ridge Subdivision; Thence Northwesterly along the Southwest line of said Lot 8 and Lot 7 to the most Southern corner of a tract of land conveyed to Russell G. Land and Karla S. Lang, his wife, by deed recorded as Document No. 2017-2412 in the Cooper County, Missouri land records and being a corner of said Lot 7; Thence Northwesterly along the Southwest line of said Lang tract to the Southwest corner thereof; Thence Northerly along the West line of said Lang tract to the Northeast corner thereof; Thence Northeasterly along the Northwest line of said Lang tract to the Northwest corner of aforesaid Lot 7 of Dunaway Ridge Subdivision and being the Northeast or most Northern corner of said Lang tract; Thence Northeasterly along the Northwest lines of Lots 6, 5, 4 and 3 of said Dunaway Ridge Subdivision to the Northwest corner of Lot 2 of said Dunaway Ridge Subdivision and being the most Northern corner of said Lot 3; Thence Northeasterly and Southeasterly along the North and Northeast lines of said Lot 2 and Lot 1 of said Dunaway Ridge Subdivision to the aforesaid North line of Santa Fe Road and being the most Eastern corner of Lot 1 of said Dunaway Ridge Subdivision; Thence Northeasterly along said North line of said Santa Fe Road to the most Southern corner of a tract of land conveyed to Panhandle Eastern Pipeline Company by deed recorded in Book 90, Page 512 in the Cooper County, Missouri land records; Thence Northwesterly along the Southwest line of said Panhandle Pipeline Company tract and the Southwest line of a tract of land conveyed to Walter Inskeep and Jamie Inskeep, his wife, by deed recorded as Document No. 2017-0270 in the Cooper County, Missouri land records to the Southwest corner of said Inskeep tract; Thence Northerly along the Western boundary line of said Inskeep tract to the South line of aforesaid Section 34, Township 49 North, Range 17 West and being the Northwest corner of said Inskeep tract; Thence Westerly along said South line to the Eastern boundary line of Evans Acres Plat 1 per plat recorded as Document No. 2022-0422 in the Cooper County, Missouri land records at the Southwest corner of said Section 34; Thence Northerly and Easterly along the Easterly and Southerly lines of Lots 21, 20, 19, 18, 11 and 9 of said Evans Acres Plat 1 to the Northeast corner of said Lot 9; Thence North 18°22'35" East along the Northeasterly projection of the East line of said Lot 9 to the intersection of said Northeasterly projection with the centerline of the Missouri River; Thence Northeasterly along said centerline to the intersection of said centerline with the East line of aforesaid Section 25, Township 49 North, Range 17 West; Thence Southerly along said East line and the East line of aforesaid Section 36, Township 49 North, Range 17 West to the intersection of said East line with the South line of Rocheport Road in the Northeast Quarter of said Section 36; Thence Westerly along said South line to a corner of the City limits of the City of Boonville, Missouri as approved

on August 30, 1927; Thence Southerly along said line of the City limits of Boonville, Missouri to a corner of the City limits of the City of Boonville, Missouri per Ordinance #4324 recorded as Document No. 2015-1964 in the Cooper County, Missouri land records; Thence Southeasterly along said line of the City limits to the City of Boonville recorded as Document No. 2015-1964 to the East line of a tract of land conveyed to Gregory C. Thoma by deed recorded as Book 472, Page 32 in the Cooper County, Missouri land records; Thence Southeasterly along the East line of said Thoma tract to the North line of Jefferson Road; Thence Southeasterly along said North line to the Southeast corner of a tract of land conveyed to Peggy Cook and Dickie Rohlfing by deed recorded in Book 235, Page 289 in the Cooper County, Missouri land records; Thence diagonally across said Jefferson Road to the South right-of-way line of Missouri State Highway '98 at the Northwest corner of a tract of land conveyed to Laurence Smith, Trust by deed recorded in Book 357, Page 749 in the Cooper County, Missouri land records and being the Northeast corner of a tract of land conveyed to Randall J. Potter by deed recorded in Book 499, Page 360 in said land records; Thence Easterly along said right-of-way line to the intersection of said right-of-way line with the East line of Hunters Ridge Subdivision per plat recorded in Plat Book 7, Page 384 in the Cooper County, Missouri land records; Thence Southerly along said East line to the Southeast corner thereof; Thence Westerly along the South line of said Hunters Ridge Subdivision to a corner of the Western boundary line of a 158.98 acre, more or less, tract of land conveyed to Troy Thurman Construction Company, Inc., by deed recorded as Document No. 2020-0685 in the Cooper County, Missouri land records; Thence Southerly along said Western boundary line to the South line of aforesaid Section 5, Township 48 North, Range 16 West at the Southwest corner of the aforesaid Thurman Construction Company, Inc. tract; Thence Easterly along said South line to the Northeast corner of a tract of land conveyed to the City of Boonville Missouri, a Municipal Facility, of the County of Cooper, State of Missouri by deed recorded as Document No. 2016-2984 in the Cooper County, Missouri land records; Thence Southerly and Easterly along the Eastern boundary line of said City of Boonville tract to the North line of Pearre Lane and being the Southeast corner of said City of Boonville tract; Thence Westerly along said North line of Pearre Lane to the intersection of said North line with the East right-of-way line of Missouri State Highway '87'; Thence Southeasterly along said right-of-way line to the intersection of said right-of-way line with the Easterly projection of the North line of a tract of land conveyed to Public Water District #2 by deed recorded in Book 522, Page 182 in the Cooper County, Missouri land records; Thence Westerly along said Easterly projection to the intersection of said Easterly projection with the West right-of-way line of aforesaid Missouri State Highway '87'; Thence Southerly along said right-of-way line to the Southeast corner of Loesing Addition Plat 1 per plat recorded in Plat Book 8, Page 210 in the Cooper County, Missouri land records; Thence Southwesterly along the Southeast line of Lots 5, 6 & 7 of said Loesing Addition Plat 1 to the Southeasterly extension of the Northeast line of a tract of land conveyed to Charles Loesing and Patricia Loesing by deed recorded in Book 546, Page 465 in the Cooper County, Missouri land records; Thence Northwesterly along said Northeast line of said Loesing tract to the Eastern boundary line of Holliday Hills Plat 3 per plat recorded in Plat Book 7, Page 156 in the Cooper County, Missouri land records at a point on the East line of Lot 71 of said Holliday Hills Plat 3, from which the Southeast corner of said Lot 71 bears South 06°10' West a distance of 41.81 feet; Thence Southerly along said Eastern boundary line of said Holliday Hills Plat 3 and the Eastern boundary line of said Lot 71 and Lots 70, 69 & 68 to a corner on said Eastern boundary line and being the Southeast corner of said Lot 68; Thence Northwesterly along the Southwest line of said Holliday Hills Plat 3 and the Southwest line of said Lot 68 to the Southwest corner of said Lot 68; Thence Northwesterly along said Southwest line of said Holliday Hills Plat 3 and the Northwesterly projection of said Southwest line of said Lot 68 to the Southeast corner of Lot 55 of said Holliday Hills Plat 3; Thence continuing Northwesterly along the Southwest line of said Holliday Hills Plat 3 and the Southwest line of said Lot 55 and Lots 54, 53, 52, 51, 50, 49 and 48 to the Southwest or most Western corner of said Lot 48; Thence Northeasterly along the Northwest line of said Lot 48 to the Northwest corner thereof; Thence

continuing Northeasterly along the Northeasterly projection of said Northwest line of said Lot 48 to the Southwest corner of Lot 47 of said Holliday Hills Plat 3; Thence continuing Northeasterly along the Northwest line of said Lot 47 and the Northwest and West lines of Lots 46, 45, 44, 29 and 28 to the most Southern corner of Lot 8 of Holliday Hills Plat 4 per plat recorded in Plat Book 7, Page 165 in the Cooper County, Missouri land records; Thence Northerly along the West line of said Lot 8 to the Southwest corner of Lot 35 of Holliday Hills Plat 8 per plat recorded as Document No. 2002-1455 in the Cooper County, Missouri land records and being the Northwest corner of said Lot 8; Thence Easterly along the South line of said Lot 35 to the Southwest corner of Lot 32 of said Holliday Hills Plat 8 and being the Southeast corner of said Lot 35; Thence Northerly along the East line of said Lot 35 and the East line of Lot 34, 33 and 14 of said Holliday Hills Plat 8 to the centerline of Steven Kole Court (Kole Drive); Thence Easterly along said centerline to the Southerly projection of the East line of Lot 12 of Holliday Hills Plat 8; Thence Northerly along said Southerly projection and the East line of said Lot 12 to the South line of a tract of land conveyed to Roger Bax, Trustee of the Roger Bax Trust dated 5th day of January, 2006 by deed recorded as Document No. 2011-1040 in the Cooper County, Missouri land records; Thence Westerly along the South line of said Bax tract to the Southwest corner thereof; Thence Northerly along the West line of said Bax tract to the South right-of-way line of Interstate Highway '70'; Thence Northerly along the Northerly projection of the aforesaid West line of said Bax tract to the North right-of-way line of said Interstate Highway '70'; Thence Easterly along said right-of-way line to the Southeast corner of a tract of land conveyed to Annetta C. Mitchell by deed recorded as Document No. 2018-1743 in the Cooper County, Missouri land records; Thence Northwesterly along the Eastern boundary line of said Mitchell tract to the South line of a tract of land conveyed to Gerald Vaughn Sell, a married person, by deed recorded as Document No. 2019-0651 in the Cooper County, Missouri land records; Thence Westerly along said South line of said Sell tract to the East line of the Southwest Quarter of aforesaid Section 8, Township 48 North, Range 16 West and being the Southwest corner of said Sell tract; Thence Northerly along the West line of said Sell tract to the centerline of Old Highway '87' (Hail Ridge Court) and being the Northwest corner of said Sell tract; Thence Northwesterly along said centerline to the South right-of-way line of Missouri State Highway '87'; Thence Northwesterly along said right-of-way line to the intersection of said right-of-way line with the North line of Jackson Road in the Southeast Quarter of Section 6, Township 48 North, Range 16 West; Thence Westerly along said North line to the Southeast corner of a tract of land conveyed to Gary K. Blakemore and Janet Sue Blakemore, his wife, by deed recorded in Book 151, Page 749 in the Cooper County, Missouri land records; Thence Northerly along the East line of said Blakemore tract and the East line of a tract of land conveyed to Jean Bruce Fuser, Trustee of the Jean Bruce Fuser Revocable Inter Vivos Trust Dated July 13, 2004 by deed recorded in Book 448, Page 724 in the Cooper County, Missouri land records to the Northeast corner of said Fuser Revocable Inter Vivos Trust tract; Thence Westerly along the North line of said Fuser Revocable Inter Vivos Trust tract to the East line of Section 1, Township 48 North, Range 17 West and being the Northwest corner of said Fuser Revocable Inter Vivos Trust tract; Thence Northerly along said East line to the intersection of said East line with the South right-of-way line of Missouri State Highway '87'; Thence Westerly along said right-of-way line to the centerline of a Private Road in the Northeast Quarter of said Section 1, Township 48 North, Range 17 West; Thence Southwesterly along said centerline to a corner on the Eastern boundary line of a tract of land conveyed to Lindsay E. McGuire in a Beneficiary deed recorded as Document No. 2019-2208 in the Cooper County, Missouri land records; Thence Westerly and Southerly along said Eastern boundary line of said McGuire tract to the Southeast corner thereof; Thence Northwesterly along the Southwest line of said McGuire tract and the Southwest line of Tracts 2 and 1 of Woodland Hills per plat recorded in Plat Book 5, Page 136 in the Cooper County, Missouri land records to the East line of the Northwest Quarter of aforesaid Section 1 and being the Southwest corner of said Tract 1 of said Woodland Hills; Thence Southerly along said East line to the Northeast corner of the Southwest Quarter of aforesaid Section 1 at the Southeast corner thereof;

Thence Westerly along the North line of said Southwest Quarter of Section 1 to the Northeast corner of the Southeast Quarter of aforesaid Section 2, Township 48 North, Range 17 West; Thence Southerly along the East line of said Section 2 to the North line of Jackson Road; Thence Easterly along said North line to the intersection of said North line with the Northerly projection of the East line of Woodland Park Plat 2 per plat recorded in Plat Book 8, Page 15 in the Cooper County, Missouri land records; Thence Southerly along said Northerly extension to the Northeast corner of Lot 20 of said Woodland Park Plat 2; Thence Southerly along the East line of said Lot 20 and Lots 21, 22, 23, 24, 25, 26, 27 and 28 to the Southeast corner of said Woodland Park Plat 2 and being the Southeast corner of said Lot 28; Thence Westerly along the South line of said Woodland Park Plat 2 to the Northwest corner of a tract of land conveyed to Edward Oswald, II by deed recorded as Document No. 2016-138 in the Cooper County, Missouri land records; Thence Southerly and Westerly along the Western boundary line of said Oswald tract to the East line of Rankin Mill Lane and being the most Western corner of said Oswald tract; Thence Northwesterly on a diagonal line across said Rankin Mill Lane to the Southwest line of said Rankin Mill Lane at the Northeast corner of a tract of land conveyed to Donald E. Foster and Diana Foster by deed recorded in Book 220, Page 343 in the Cooper County, Missouri land records; Thence Southwesterly along said Northwest line to the East line of aforesaid Section 11, Township 48 North, Range 17 West; Thence Southerly along said East line to the Northeast corner of a tract of land conveyed to Cooper County Community Hospital LLC by deed recorded as Document No. 2018-0275 in the Cooper County, Missouri land records; Thence Westerly along the North line of said Cooper County Community Hospital LLC tract to the East line of Boonslick Road and being the Northwest corner thereof; Thence Southerly along said East line to the most Western corner of a tract of land conveyed to Louise Cary in a Judgement recorded in Book 414, Page 164 in the Cooper County, Missouri land record and being the Northwest corner of a tract of land conveyed to DDPM, Inc., a California corporation, by deed recorded as Document No. 2014-0552 in the Cooper County, Missouri land records; Thence Easterly and Southerly along the Western boundary line of said Cary tract to the North right-of-way line of Missouri State Highway '70' in the Southeast Quarter of Section 11, Township 48 North, Range 17 West at the Southwest corner of said Krohn tract; Thence Westerly along said right-of-way line to the point of beginning.

-AND-

A tract of 72.68 acres of land in part in Section 4 and Section 9, Township 48 N, Range 16 W, west of the 5th principal meridian, Cooper County, Missouri, described as follows: The point of beginning being at the northwest corner of Section 9, lying on the west lines of the tract; thence north on a bearing of N 0 degrees 46 minutes 33 seconds W, along the west line of Section 4, a distance of 1,427.02 feet; thence east on a bearing of S 85 degrees 23 minutes 54 seconds E, a distance of 912.00 feet; thence south on a bearing of S 3 degrees 23 minutes 30 seconds W, a distance of 4,087.70 feet to the south line of the NW 1/4 of said Section 9; thence west on a bearing of N 85 degrees 23 minutes 54 seconds W, a distance of 650.00 feet along the south line of the NW 1/4 of said Section 9 to the southwest corner of the NW 1/4 of said Section 9; thence north along the west line of said Section 9 on a bearing of N 0 degrees 00 minutes 00 seconds W, a distance of 2,674.67 feet to the point of beginning.

-AND-

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 16 WEST, OF THE FIFTH PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER SECTION, SAID POINT BEING A FOUND STONE; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, (THIS AND ALL BEARINGS REFERRED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 2526.59 FEET TO A POINT, SAID POINT BEING AN IRON BAR AND CAP STAMPED LS 189, AND LYING 138.68 FEET NORTHERLY OF AN IRON BAR AND CAP (STAMPED LS 189) FOUND AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 8, AS MEASURED ALONG THE EASTERLY LINE OF SAID NORTHEAST QUARTER AND SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE NEW MADRID SURVEY NUMBER 2878 AS REFERENCED BY A SURVEY RECORDED IN THE SURVEY RECORD BOOK 7 AT PAGE 95, AND SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ON A BEARING OF NORTH 84 DEGREES 21 MINUTES 39 SECONDS WEST ALONG THE NORTH LINE OF SAID NEW MADRID SURVEY NUMBER 2878, A DISTANCE OF 591.86 FEET TO A POINT ON SAID NORTH LINE; THENCE ON A BEARING OF NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST, A DISTANCE OF 1329.90 FEET TO A POINT; THENCE ON A BEARING OF SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 512.50 FEET TO A POINT ON THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 8; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST ALONG SAID EASTERLY QUARTER SECTION LINE, A DISTANCE OF 1341.24 FEET, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF CONTAINS 736,596 SQUARE FEET, OR 16.910 ACRES, MORE OR LESS.

ALSO,

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 16 WEST, COUNTY OF COOPER, STATE OF MISSOURI, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER SECTION, SAID POINT BEING A FOUND STONE; THENCE

ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, (THIS AND ALL BEARINGS REFERRED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 2617.77 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF THE EASTERLY LINE OF SAID NORTHEAST QUARTER AND THE NORTHERLY RIGHT-OF-WAY LINE OF PEARRE ROAD AS IT NOW EXISTS, SAID NORTHERLY RIGHT-OF-WAY LINE DESCRIBED IN A WARRANTY DEED FROM S.A. PEARRE AND GOLDIE PEARRE, HUSBAND AND WIFE, TO THE CITY OF BOONVILLE, DATED AUGUST 17, 1973 AND RECORDED IN BOOK 149 AT PAGE 83 IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI, SAID POINT LYING 47.50 FEET NORTHERLY OF AN IRON BAR AND CAP (STAMPED LS 189) FOUND AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 8, AS MEASURED ALONG SAID EASTERLY LINE OF THE NORTHEAST QUARTER, SAID POINT ALSO BEING THE POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 205.00 FEET, A CENTRAL ANGLE OF 52 DEGREES 27 MINUTES 40 SECONDS AND AN INITIAL TANGENT BEARING OF SOUTH 42 DEGREES 39 MINUTES 26 SECONDS WEST, SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 187.70 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS SOUTH 68 DEGREES 53 MINUTES 16 SECONDS WEST, A CHORD DISTANCE OF 181.21 FEET TO A POINT; THENCE ON A BEARING OF NORTH 84 DEGREES 58 MINUTES 57 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 434.14 FEET TO A POINT; THENCE ON A BEARING NORTH 4 DEGREES 46 MINUTES 05 SECONDS EAST, A DISTANCE OF 177.23 FEET TO A POINT; THENCE ON A BEARING OF SOUTH 84 DEGREES 21 MINUTES 39 SECONDS EAST ALONG SAID NORTH LINE OF SAID NEW MADRID SURVEY, NUMBER 2878, A DISTANCE OF 591.86 FEET TO A POINT ON SAID EAST LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 8; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 91.18 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 99,730 SQUARE FEET, OR 2.290 ACRES, MORE OR LESS.

-ALSO-

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 16 WEST AND IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 48 NORTH RANGE 16 WEST OF THE FIFTH PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A STONE CORNER FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE NORTH 00 DEGREES 36 MINUTES 48 SECONDS EAST, (THIS AND ALL OTHER BEARINGS REFERENCED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) ALONG THE WESTERLY LINE OF SAID SECTION

4, A DISTANCE OF 1427.02 FEET TO THE NORTHWEST CORNER OF THE JESSE VIETTEL MEMORIAL AIRPORT BOONVILLE AS DESCRIBED IN A WARRANTY DEED FROM ALMA E. VIETTEL TO THE CITY OF BOONVILLE, DATED JULY 20, 1973 AND RECORDED IN BOOK 149 AT PAGE 81, IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI; THENCE SOUTH 84 DEGREES 00 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE OF SAID WARRANTY DEED, A DISTANCE OF 253.57 FEET TO A POINT ON A LINE LYING 400.00 FEET WESTERLY OF AND PARALLEL TO THE EXTENDED CENTERLINE

OF THE RUNWAY OF SAID JESSE VIERTEL MEMORIAL AIRPORT - BOONVILLE AS IT NOW EXISTS, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 814.42 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 600.00 FEET TO A POINT ON A LINE LYING 200.00 FEET EASTERLY OF AND PARALLEL TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY; THENCE SOUTH 40 DEGREES 13 MINUTES 55 SECONDS EAST, A DISTANCE OF 282.84 FEET TO A POINT ON A LINE LYING 400.00 FEET EASTERLY OF AND PARALLEL TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY; THENCE SOUTH 04 DEGREES 46 MINUTES 05 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 2,052.58 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SOUTHWEST QUARTER OF SAID SECTION 4; THENCE CONTINUING SOUTH 04 DEGREES 46 MINUTES 05 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 2655.34 FEET TO A POINT ON THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 9; THENCE NORTH 84 DEGREES 08 MINUTES 43 SECONDS WEST ALONG SAID SOUTHERLY LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 142.66 FEET TO THE SOUTHEAST CORNER OF SAID WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE; THENCE NORTH 04 DEGREES 46 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF SAID WARRANTY DEED, A DISTANCE OF 2655.67 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SOUTHWEST QUARTER OF SAID SECTION 4; THENCE CONTINUING NORTH 04 DEGREES 46 MINUTES 51 SECONDS EAST ALONG SAID EASTERLY LINE, A DISTANCE OF 1421.07 FEET TO THE NORTHEAST CORNER OF SAID WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE; THENCE NORTH 84 DEGREES 00 MINUTES 32 SECONDS WEST ALONG THE NORTHERLY LINE OF SAID WARRANTY DEED, A DISTANCE OF 658.43 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 1,217,977 SQUARE FEET OR 27.961 ACRES MORE OR LESS.

AND (c) an avigation easement upon and over land owned by Jesse Viertel more particularly described as:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 16 WEST OF THE PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT A STONE CORNER FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE NORTH 00 DEGREES 36 MINUTES 48 SECONDS EAST, (THIS AND ALL OTHER BEARINGS REFERENCED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 1427.02 FEET TO THE NORTHWEST CORNER OF THE JESS VIERTEL MEMORIAL AIRPORT - BOONVILLE AS DESCRIBED IN WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE, DATED JULY 20, 1973 AND RECORDED IN BOOK 149 AT PAGE 81, IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI; THENCE SOUTH 84 DEGREES 00 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE OF SAID WARRANTY DEED, A DISTANCE OF 253.57 FEET TO A POINT ON A LINE LYING 400.00 FEET WESTERLY OF AND PARALLEL TO THE EXTENDED CENTERLINE OF THE RUNWAY OF SAID JESSE VIERTEL MEMORIAL AIRPORT - BOONVILLE AS IT NOW EXISTS; THENCE NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 814.42 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO

SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 130.01 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 56 MINUTES 33 SECONDS WEST, A DISTANCE OF 803.99 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 700 FEET TO A POINT; THENCE SOUTH 10 DEGREES 28 MINUTES 43 SECONDS WEST, A DISTANCE OF 867.95 FEET TO A POINT; THENCE ALONG A BEARING OF NORTH 40 DEGREES 13 MINUTES 55 SECONDS WEST, A DISTANCE 90.0 FEET TO A POINT; THENCE ALONG A BEARING OF NORTH 85 DEGREES 13 MINUTES 55 SECONDS WEST ALONG A LINE PERPENDICULAR TO SAID EXTENDED LINE OF SAID EXISTING RUNWAY, A DISTANCE OF 469.99 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 498,228 SQUARE FEET OR 11.438 ACRES MORE OR LESS.

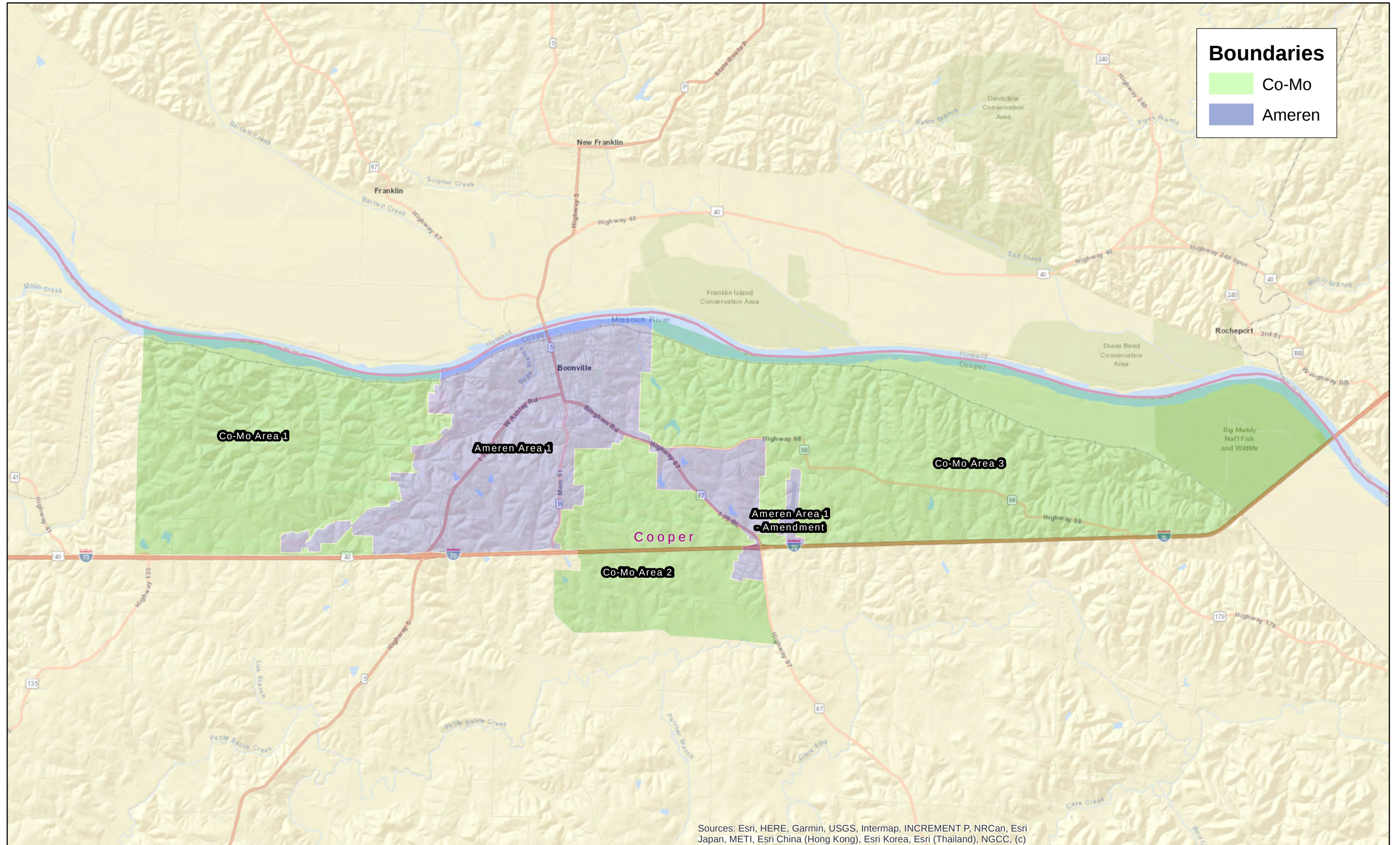
-AND-

Commencing at the Northwest corner of said Northwest Quarter of the Southwest Quarter of Section 9, thence along the Quarter Section line, South 85 Degrees 32' 30" East 1124 feet to the Southeasterly right-of-way line of a tract described in Deed Book 149, Page 83 and the true point of beginning; thence continuing along said Quarter Section line South 85 Degrees 32' 30" East 1366.35 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section 9; thence along the Quarter/Quarter Section line, South 00 Degrees 54' 10" East 516.72 feet to the North right-of-way line of Interstate Highway 70, thence along the North right-of-way line of Interstate Highway 70, South 87 Degrees 06' 05" West 1369.06 feet to the West line of said Section 9; thence along the said West line of Section 9, North 01 Degrees 10' 42" West 683.40 feet to the South right-of-way line of a tract described in Deed Book 149, Page 83; thence along said South right-of-way line on a non-tangent curve to the left having a radius of 255.00 feet, an arc length of 14.14 feet and a chord bearing and distance of North 51 Degrees 07' 50" East 14.13 feet to the point of beginning, containing 19.02 acres.

Co-Mo and Ameren Boundary - Cooper County

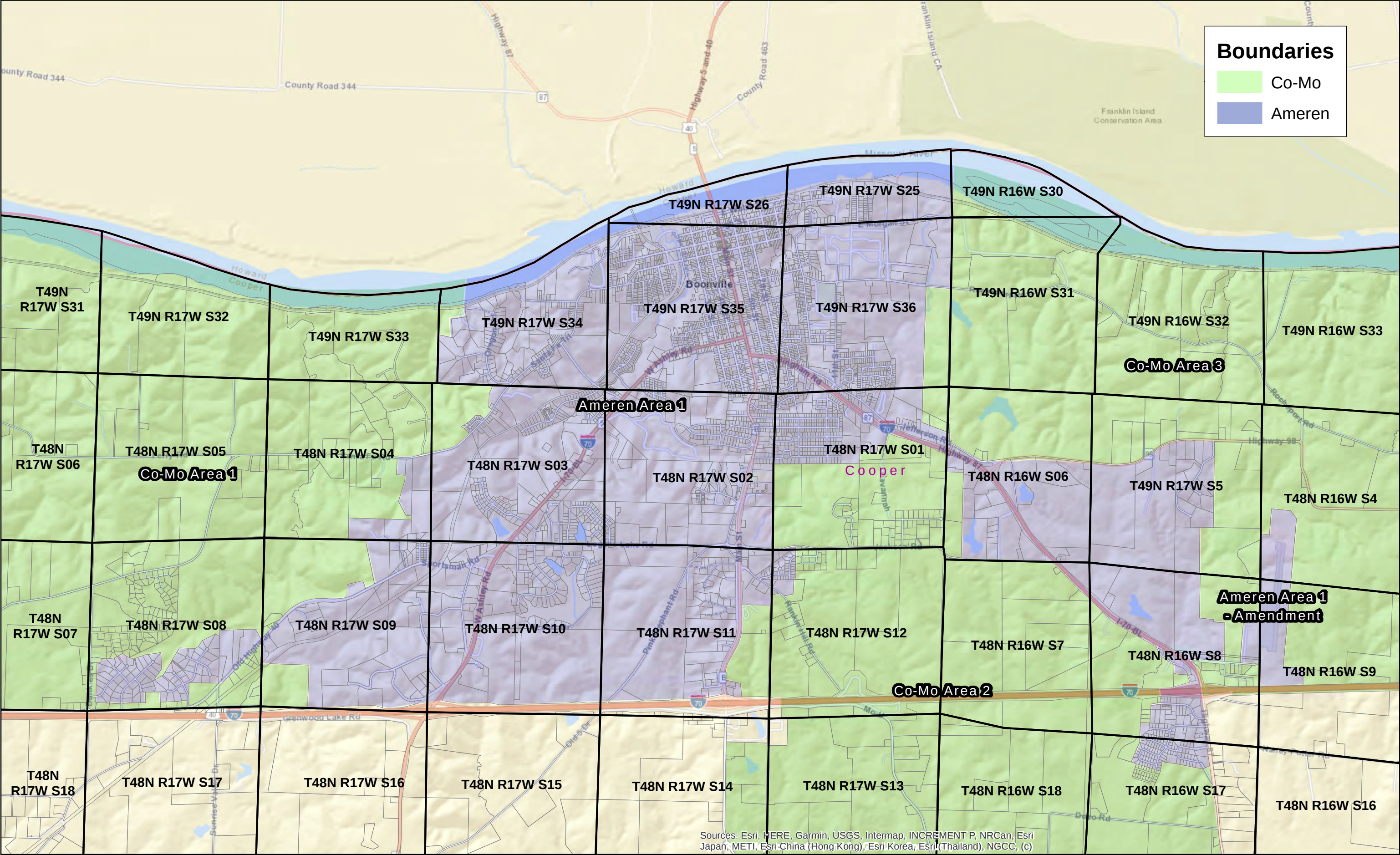
Boonville Area

Co-Mo Electric Cooperative and
Union Electric Company d/b/a Ameren Missouri



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

Co-Mo and Ameren Boundary - Cooper County
Boonville Area - Ameren Area 1



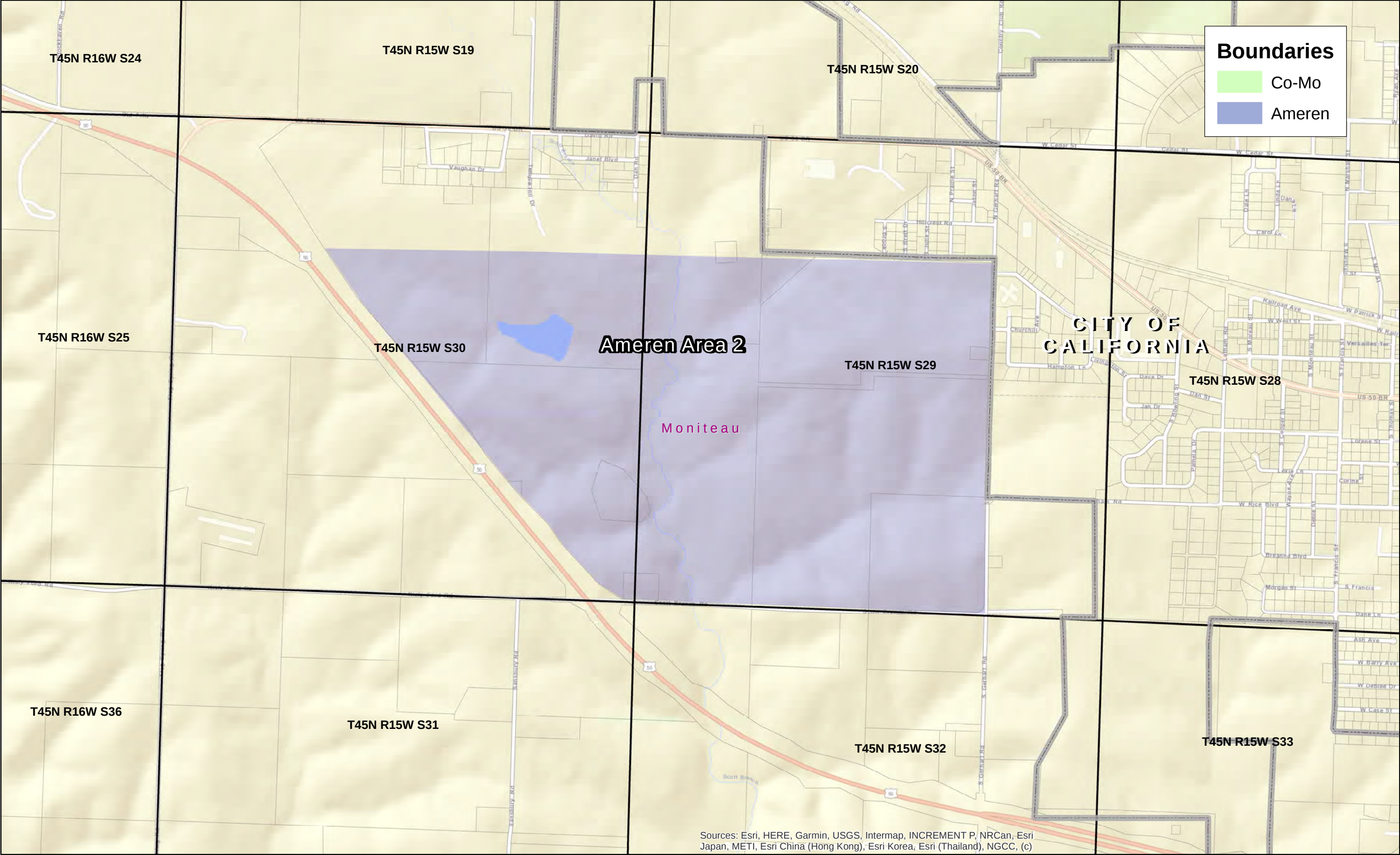
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

Moniteau County Ameren Missouri Boundary Description
(Ameren Area 2)

All of Section 29 and part of Section 30, Township 45 North, Range 15 West of the Fifth Principal Meridian and being more particularly described as follows: Beginning at the Northeast corner of the Southwest Quarter of the Northeast Quarter of aforesaid Section 29; Thence Southerly along the East line of said Quarter Quarter and the East line of the West Half of the Southeast Quarter of said Section 29 to the South line of said Section 29 and being the Southeast corner of said West Half; Thence Westerly along said South line of said Section 29 and the South line of aforesaid Section 30 to the intersection of said South line with the East right-of-way line of U.S. Highway No. '50' in the Southeast Quarter of the Southeast Quarter of said Section 30; Thence Northwesterly along said right-of-way line to the intersection of said right-of-way line with the South line of the Northeast Quarter of the Northwest Quarter of aforesaid Section 30; Thence Easterly along said South line and the South line of the North Half of the Northeast Quarter of said Section 30 to the East line of said Section 30 at the Southeast corner of said North Half and being the Southwest corner of the North Half of the Northwest Quarter of said Section 30; Thence Easterly along the South line of said North Half and the South line of the Northwest Quarter of aforesaid Northeast Quarter of Section 29 to the point of beginning.

Co-Mo and Ameren Boundary- Moniteau County

City of California Area

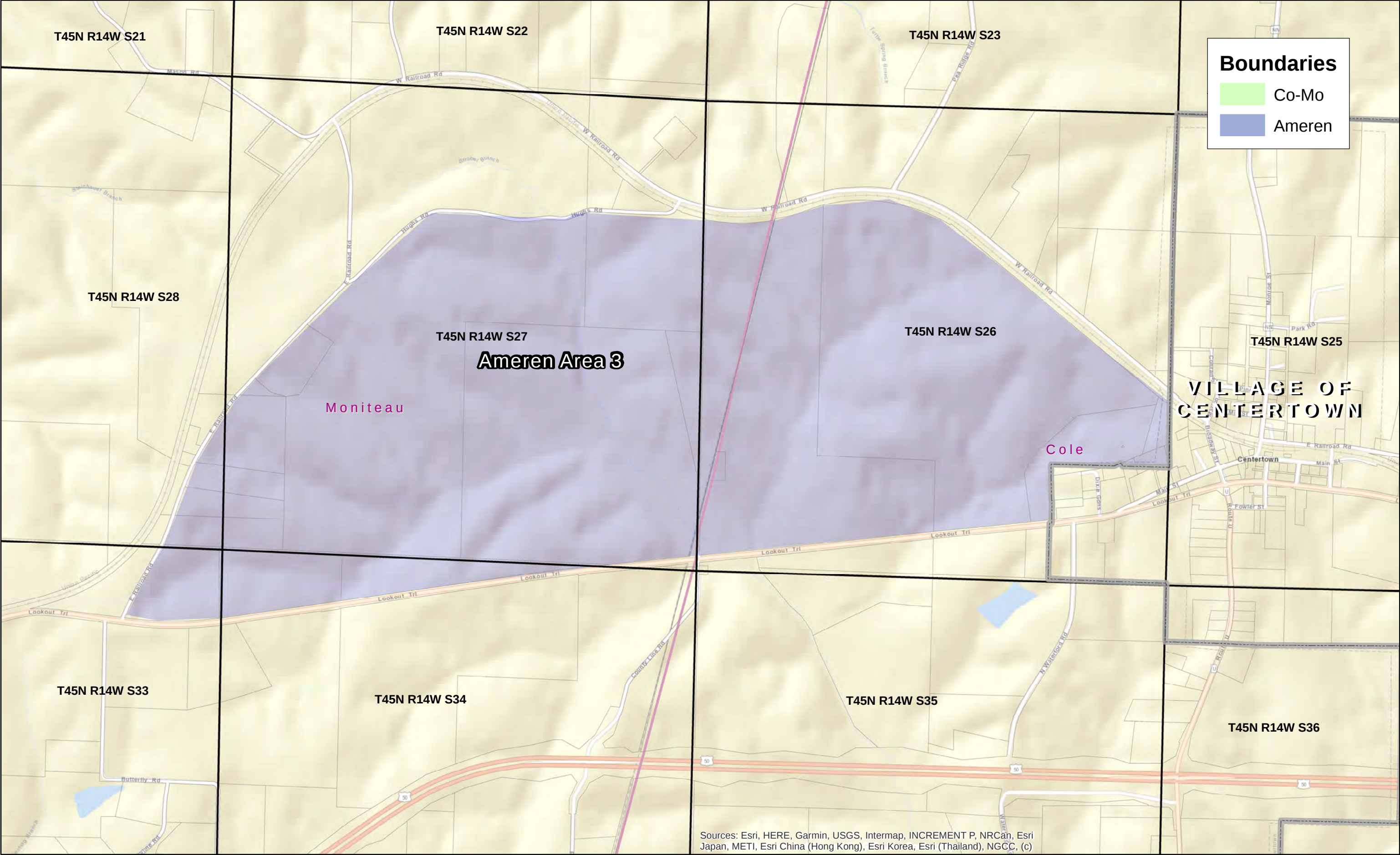


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

Cole County/Moniteau County Ameren Missouri Boundary Description
(Ameren Area 3)

Part of Sections 26, 27, 28, 33 & 34, Township 45 North, Range 14 West of the Fifth Principal Meridian and being more particularly described as follows: Beginning on the East line of aforesaid Section 26 at the Northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 26; Thence Westerly along the North line of said Quarter Quarter to the Northwest corner thereof; Thence Southerly along the West line of said Quarter Quarter to the intersection of said West line with the North line of Lookout Trail; Thence Southwesterly along said North line of said Lookout Trail to the intersection of said North line with the East line of Railroad Road in the Northeast Quarter of the Northeast Quarter of aforesaid Section 33, Township 45 North, Range 14 West; Thence Northeasterly along said East line of Railroad Road to the intersection of said East line with the South line of Hughs Road; Thence Northeasterly along said South line of Hughs Road to the South line of a Railroad right-of-way; Thence Easterly along said Railroad right-of-way line to the East line of aforesaid Section 26; Thence Southerly along said East line to the point of beginning.

Co-Mo and Ameren Boundary - Moniteau / Cole County
Union Electric Company d/b/a Ameren Missouri
Centertown Area



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

Cooper County Co-MO Boundary Description

(Co-Mo Area 1)

Sections 31, 32, 33, 34, Township 49 North, Range 17 West; U.S. Survey No. 3004 and Sections, 25 & 36, Township 49 North, Range 18 West; Sections 1, 12 & 13, Township 48 North, Range 18 West and Sections 3, 4, 5, 6, 7, 8, 9, 16, 17 & 18 Township 48 North, Range 17 West of the Fifth Principal Meridian and being more particularly described as follows: Beginning at the Northwest corner of aforesaid Section 1, Township 48 North, Range 18 West; Thence Easterly along the North line of said Section 1 to the Southwest corner of aforesaid Section 36, Township 49 North, Range 18 West; Thence North along the West line of said Section 36 and the West line of aforesaid Section 25, Township 49 North, Range 18 West and the Northerly extension thereof to the centerline of the Missouri River in the Southwest Quarter of said Section 25; Thence Easterly along said centerline to the intersection of said centerline with the Northeasterly projection of the East line of Lot 9 of Evans Acres, Plat No. 1 per plat recorded as Document No. 2022-0422 in the Cooper County, Missouri land records; Thence South 08°22'35" West along said Northerly projection to the Northeast corner of said Lot 9; Thence Southerly and Westerly along the Eastern boundary line of said Evans Acres, Plat No. 1 along the Easterly and Southerly lines of said Lot 9 and Lots 11, 18, 19, 20 & 21 to the Southwest corner of aforesaid Section 34, Township 49 North, Range 17 West; Thence Easterly along the South line of said Section 34 to the Northwest corner of a tract of land conveyed to Walter Inskeep and Jamie Inskeep, his wife, by deed recorded as Document No. 2017-0270 in the Cooper County, Missouri land records; Thence Southerly along the Western boundary line of said Inskeep tract to the Southwest corner thereof; Thence Southeasterly along the Southwest line of said Inskeep tract and the Southwest line of a tract of land conveyed to Panhandle Eastern Pipeline Company by deed recorded in Book 90, Page 512 in the Cooper County, Missouri land records to the Northeast line of Santa Fe Trail in the Northwest Quarter of aforesaid Section 3, Township 48 North, Range 17 West and being the most Southern corner of said Panhandle Eastern Pipeline Company; Thence Southwesterly along said Northwest line of said Santa Fe Trail to the most Eastern corner of Lot 1 of Dunaway Ridge Subdivision per plat recorded in Plat Book 7, Page 292 in the Cooper County, Missouri land records; Thence Northwesterly and Westerly along the North and Northeast line of Lots 1 and 2 of said Dunaway Ridge Subdivision to the Northwest corner of said Lot 2 and being the most Northern corner of Lot 3 of said Dunaway Ridge Subdivision; Thence Southwesterly along the Northwest lines of lots 3, 4, 5 & 6 of said Dunaway Ridge to the Northeast or most Northern corner of a tract of land conveyed to Russell G. Lang and Karla S. Lang, his wife, by deed recorded as Document No. 2017-2412 in the Cooper County, Missouri land records and being the Northwest corner of aforesaid Lot 7 of said Dunaway Ridge; Thence Southwesterly along the Northwest line of said Lang tract to the Northwest corner thereof; Thence Southeasterly along the West line of said Lang tract to the Southwest corner thereof; Thence Southeasterly along the Southwest line of said Lang tract to a corner of aforesaid Lot 7 of said Dunaway Ridge and being the Southeast or most Southern corner of said Lang tract; Thence Southeasterly along said Southwest line of Lots 7 and 8 of said Dunaway Ridge Subdivision to the North line of Santa Fe Road in the Northwest corner of aforesaid Section 3, Township 48 North, Range 17 West and being the most Southern corner of said Lot 8; Thence Southwesterly along said North line of said Santa Fe Road to the Northerly extension of the West line of a tract of land conveyed to Joey G. Bishop and Stacey M. Bishop, his wife, by deed recorded as Document No. 2013-1526 in the Cooper County, Missouri land records; Thence South along said Northerly extension and the West line of said Bishop tract to the Southwest corner thereof; Thence East along the South line of said Bishop tract to the Western boundary line of a tract of land conveyed to Eric Parent and Patricia Parent, his wife, by deed recorded in Book 439, Page 502 in the Cooper County, Missouri land records; Thence Southerly along said Western boundary line of said Parent tract to the Southwest corner thereof; Thence East along the South line of said Parent tract to the East line of the West Half of the East Half of the

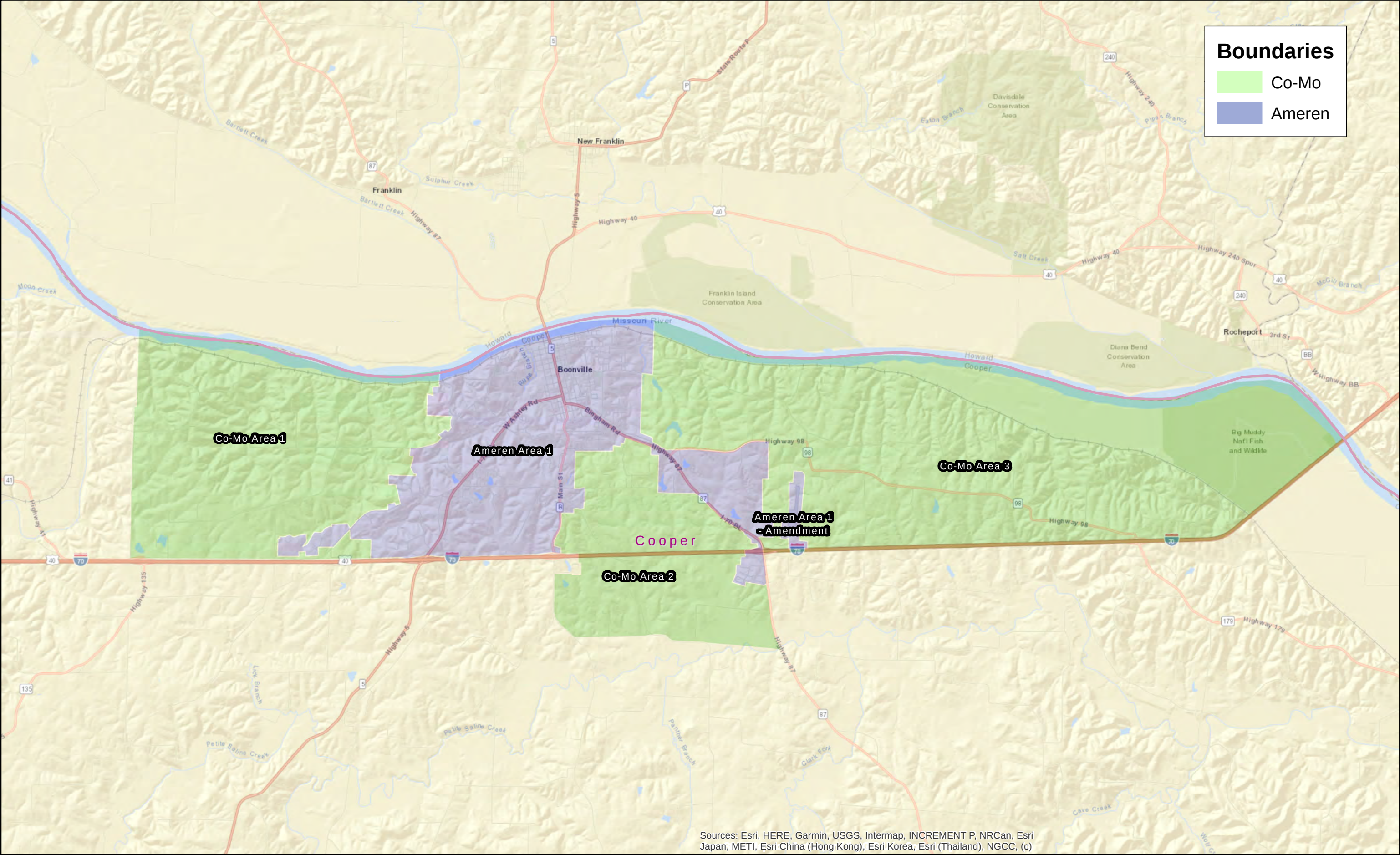
Southeast Quarter of aforesaid Section 4, Township 48 North, Range 17 West and being the Southeast corner of said Parent tract; Thence South along said East line to the Southeast corner of a tract of land conveyed to Kathy M. Schneider by deed recorded as Document No. 2013-3446 in the Cooper County, Missouri land records; Thence Westerly along the South line of said Schneider tract to the West line of the aforesaid Southeast Quarter of Section 4, Township 48 North, Range 17 West and being the Southwest corner of said Schneider tract; Thence Southerly along said West line of the Southeast Quarter of said Section 4 to the South line of said Section 4 and being the Southwest corner of said Southeast Quarter of said Section 4; Thence Easterly along said South line to the Northwest corner of a tract of land conveyed to Lance M. Griffin and Blake G. Frevert by deed recorded as Document No. 2017-0687 in the Cooper County, Missouri land records; Thence Southeasterly along the Southwest line of said Griffin/Frevert tract and the Southwest line of a tract of land conveyed to Public Water Supply District #2 recorded in Book 149, Page 728 in the Cooper County, Missouri land records to the North right-of-way line of Old U.S. Highway No. '40' in the Northeast Quarter of aforesaid Section 9, Township 48 North, Range 17 West and being the Southwest corner of said Public Water Supply District #2 tract; Thence Southwesterly along said North line of Old U.S. Highway '40' to the Southeast corner of a tract of land conveyed to Dicky D. Smalley and Kristi D. Smalley, his wife, by deed recorded in Book 323, Page 711 in the Cooper County, Missouri land records; Thence Northwesterly along the Northeast line of said Smalley tract to the Northeast corner thereof; Thence Southwesterly along the Northwest line of said Smalley tract to the West line of the aforesaid Northeast Quarter of aforesaid Section 9, Township 48 North, Range 17 West and being the Northwest corner of said Smalley tract; Thence Southerly along said West line of said Northeast Quarter of said Section 9 to the intersection of said West line with the aforesaid North right-of-way line of Old U.S. Highway '40' in said Northeast Quarter of Section 9, Township 48 North, Range 17 West and being the Southwest corner of said Smalley tract; Thence Southwesterly along said right-of-way line to the Southwest corner of a tract of land conveyed to Lance M. Griffin and Amy N. Griffin-Frevert by deed recorded as Document No. 2021-1239 in the Cooper County, Missouri land records; Thence Northwesterly along the Southwest line of said Griffin/Griffin-Frevert tract to the Northwest corner thereof; Thence Westerly along the North line of a tract of land conveyed to Steven C. Helt by deed recorded in Book 582, Page 672 in the Cooper County, Missouri land records to the Northeast corner of a tract of land conveyed to Geoffrey D. Haning and Virginia I. Haning Revocable Trust, dated March 8, 1999 by deed recorded in Book 324, Page 76 in the Cooper County, Missouri land records and being the Northwest corner of said Helt tract; Thence Westerly along the North line of said Haning and the Westerly extension thereof to the Northeast corner of a tract of land conveyed to Duane A. McGuire and Debbie A. McGuire, his wife, by deed recorded in Book 209, Page 309 in the Cooper County, Missouri land records; Thence Westerly along the North line of said McGuire tract to the East line of Timberlake Estates – Plat 1 per plat recorded as Document No. 2000-469 in the Cooper County, Missouri land records; Thence Southerly along said East line of said Timberlake Estates Plat 1 to the Southeast corner of Tract B of said Timberlake Estates – Plat 1 and being the Northeast corner of Lot 17 of said Timberlake Estates Plat 1; Thence Westerly along the Southern boundary line of said Tract B and the Southern boundary line of Tract A of said Timberlake Estates – Plat 1 to the Northwest corner of Lot 22 of said Timberlake Estates Plat 1; Thence Westerly along the Westerly projection of the North line of said Lot 22 to the Northeast corner of Lot 23 of said Timberlake Estates Plat 1; Thence continuing Westerly along the aforesaid Southern boundary line of said Tract A of said Timberlake Estates – Plat 1 to the most Southern corner thereof and being on the Eastern boundary line of Timberlake Estates – Plat 2 per plat recorded Plat Book 8, Page 12 in the Cooper County, Missouri land records at the most Southern corner of Lot 50 of said Timberlake Estates – Plat 2; Thence Northerly along said Eastern boundary line along the Southeast line of said Lot 50 and the Southeast line of Lots 51 and 52 to the most Eastern corner of said Lot 52; Thence Northerly along said Eastern boundary line of Timberlake Estates – Plat 2 along the East line of said Lot 52 and the East line of Lot 53 of said

Timberlake Estates – Plat 2 to the most Northern corner of said Lot 53 and being the most Eastern corner of Lot 54 of said Timberlake Estates – Plat 2; Thence along the Northern boundary line of said Timberlake Estates – Plat 2 along the Northern line of said Lot 54 and the Northern lines of Lots 55, 56, 57, 58, 70, 71, 72, 73 of said Timberlake Estates – Plat 2 to the Northeast or most Northern corner of Lot 82A of the Replat of Lots 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates - Plat 2 per plat recorded in Plat Book 8, Page 180 in the Cooper County, Missouri land records; Thence along the Northern boundary line of said Replat of Lots 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates - Plat 2 along the Northern line of said Lot 82A and the Northern lines of Lot 81A and Lot 80A of said Replat of Lots 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates - Plat 2 to the Northeast corner of a tract of land conveyed to Scotty L. Fenical and Peggy A. Fenical, his wife, by deed recorded in Book 268, Page 645 in the Cooper County, Missouri land records and being the Northwest corner of said Lot 80A; Thence Southerly and Westerly along the Western boundary line of said Lot 80A to the Most Northern corner of Lot 79A of said Replat of Lots 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates - Plat 2 and being the most Western corner of said Lot 80A; Thence Southerly along the West line of Lot 79A of said Replat of Lots 74, 79 through 82 and the curved segment of Tezcuco Court of Timberlake Estates - Plat 2 and the West line of Lots 76, 77 & 78 of said Timberlake Estates - Plat 2 to the Southwest corner of said Lot 78; Thence continuing Southerly along the Southerly projection of said West line of said Lot 78 to the Northwest corner of Lot 64 of said Timberlake Estates – Plat 2 recorded in Plat Book 8, Page 12; Thence continuing along said West line of said Timberlake Estates – Plat 2 recorded in Plat Book 8, Page 12 along the West line of said Lot 64 to the Southwest corner thereof; Thence Easterly along the South line of said Timberlake Estate – Plat 2 recorded in Plat Book 8, Page 12 along the South line of Lots 64, 65 & 63 to the Southeast corner of said Lot 63; Thence along the Easterly projection of said South line of said Lot 63 to the Southwest corner of Lot 41 of said Timberlake Estates – Plat 2; Thence continuing along said South line of said Timberlake Estates Plat 2 recorded in Plat Book 8, Page 12 along the South lines of Lots 41, 40 & 39 of said Timberlake Estates Plat 2 to the Southeast corner of said Lot 39; Thence Northerly along the East line of said Lot 39 to the Northeast corner thereof and being the Southwest corner of Lot 46 of said Timberlake Estates Plat 2; Thence Easterly along the South line of said Lot 46 to the Southeast corner thereof and being the Southwest corner of Lot 38 of Timberlake Estates Plat 1 per plat recorded in Plat Book 7, Page 145 in the Cooper County, Missouri land records; Thence Easterly along the South line of said Lot 38 to the Northwest corner of Lot 1 of said Timberlake Estates Plat 1; Thence Southerly along the West line of said Lot 1 to the Southwest corner thereof; Thence Easterly along the Southern boundary line of said Lot 1 and Lots 2, 3 & 4 of said Timberlake Estates Plat 1 to the West line of Timberlake Court and being the Southeast corner of said Lot 4; Thence Easterly along the Easterly projection of the aforesaid South line of said Lot 4 to the West line of a tract of land conveyed to Tatum Martin by deed recorded as Document No. 2020-0933 in the Cooper County, Missouri land records; Thence Northerly along the West line of said Martin tract to the Northwest corner thereof; Thence Easterly along the North line of said Martin tract and the Easterly projection thereof to the South right-of-way line of Old Highway '40' in the Southwest Quarter of aforesaid Section 8, Township 48 North, Range 17 West; Thence Northeasterly along said right-of-way line to the intersection of said right-of-way line with the East line of aforesaid Section 8, Township 48 North, Range 17 West; Thence Southerly along said East line to the Northwest corner of the Southwest Quarter of the Southwest Quarter of aforesaid Section 9, Township 48 North, Range 17 West; Thence Easterly along the North line of said Quarter Quarter and the North line of the Southeast Quarter of the Southwest Quarter of said Section 9, Township 48 North, Range 17 West to the Northeast corner of a tract of land conveyed to Dale J. Wassmann and Ashley N. Wassmann, his wife, by deed recorded in Book 536, Page 134 in the Cooper County, Missouri land records; Thence Southerly and Westerly along the Eastern boundary line of said Wassmann tract to the North right-of-way line of Interstate Highway

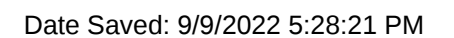
'70' in the Northwest Quarter of aforesaid Section 16, Township 48 North, Range 17 West and being the Southeast corner of said Wassmann tract; Thence Westerly along said right-of-way line to its intersection with the West line of Section 12, Township 48 North, Range 18 West; Thence Northerly along the West line of said Section 12 and the West line of aforesaid Section 1, Township 48 North, Range 18 West to the point of beginning.

Co-Mo and Ameren Boundary - Cooper County
Boonville Area

Co-Mo Electric Cooperative and
Union Electric Company d/b/a Ameren Missouri



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)



Cooper County Co-MO Boundary description

(Co-MO Area 2)

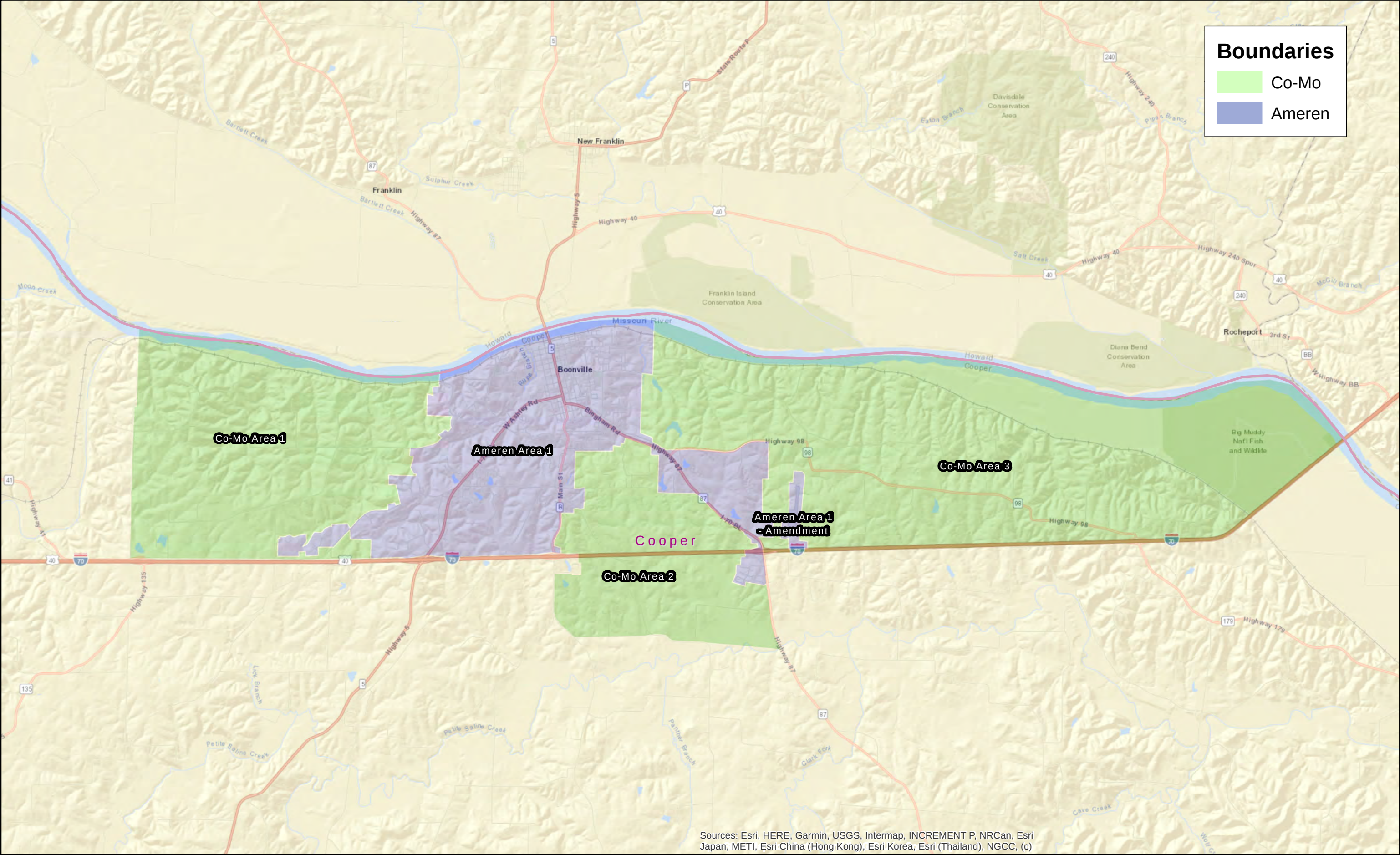
Sections 1, 11, 12, 13, 14 & 24 and U.S. Survey No 2747 Township 48 North, Range 17 West and Sections 6, 7, 8, 17, 18, 19 and U.S. Survey Nos. 2591, 2747, 2642, 2672, 2746, 2750, 2878, 2925, 2926 and 2927, Township 48 North, Range 16 West and being more particularly described as follows: Beginning at the Southwest corner of the Northwest Quarter of said Section 1, Township 48 North, Range 17 West; Thence Easterly along the South line of said Northwest Quarter to the Southeast corner thereof; Thence Northerly along the East line of said Northwest Quarter to the Southwest corner Woodland Hills per plat recorded in Plat Book 5, Page 136 in the Cooper County, Missouri land records; Thence Easterly along the Southeast line of Tract 2 of said Woodland Hills and the Southeast line of a tract of land conveyed to Lindsay E. McGuire in a beneficiary deed recorded as Document No. 2019-2208 in the Cooper County, Missouri land records to the most South Southeast corner thereof; Thence Northerly and Easterly along the Eastern boundary line of said McGuire tract to the centerline of a private road and being a corner on said Eastern boundary of said McGuire tract; Thence Northeasterly along said centerline to the intersection of said centerline with the South right-of-way line of Missouri State Highway '87' in the Northeast Quarter of aforesaid Section 1, Township 48 North, Range 17 West; Thence Southeasterly along said right-of-way line to its intersection with the East line of aforesaid Section 1; Thence Southerly along said East line to the Northwest corner of a tract of land conveyed to Jean Bruce Fuser, Trustee of the Jean Bruce Fuser Revocable Inter Vivos Trust Dated July 13, 2004 by deed recorded in Book 448, Page 724 in the Cooper County, Missouri land records; Thence Easterly along the North line of said Fuser tract to the Northeast corner thereof; Thence Southerly along the East line of said Fuser tract and the East line of a tract of land conveyed to Gary K. Blakemore and Janet Sue Blakemore, his wife, by deed recorded in Book 151, Page 749 in the Cooper County, Missouri land records to the North line of Jackson Road and being the Southeast corner of said Blakemore tract; Thence Easterly along said North line of Jackson Road to the intersection of said North line with the South right-of-way line of aforesaid Missouri State Highway '87'; Thence Southeasterly along said right-of-way line to the intersection of said right-of-way with the centerline of Old Highway 87 (a/k/a Hail Ridge Court); Thence Southeasterly along said centerline to the intersection of said centerline with the West line the Southeast Quarter Section 8, Township 48 North, Range 16 West at the Northwest corner of a tract of land conveyed to Gerald Vaughn Sell, a married person, by deed recorded as Document No. 2019-0651 in the Cooper County, Missouri land records; Thence Southerly along the West line of said Sell tract to the Southwest corner thereof; Thence Easterly along the South line of said Sell tract to a corner of the Eastern boundary line of a tract of land conveyed to Annetta C. Mitchell by deed recorded as Document No. 2018-1743 in the Cooper County, Missouri land records; Thence Southerly along said Eastern boundary of said Mitchell tract to the North right-of-way line of Interstate Highway '70' and being the Southeast corner of said Mitchell tract; Thence Westerly along said right-of-way line to its intersection with the Northerly projection of the West line of a tract of land conveyed to Roger Bax, Trustee of the Roger Bax Trust dated 5th day of January, 2006 by deed recorded as Document No. 2011-1040 in the Cooper County, Missouri land records; Thence Southerly along said Northerly extension and the West line of said Bax tract to the Southwest corner thereof; Thence Easterly along the South line of said Bax tract to the East line of Lot 12 of Holliday Hills Subdivision Plat 8 per plat recorded as Document No. 2002-1455 in the Cooper County, Missouri land records; Thence Southerly along said East line of said Lot 12 and the Southerly extension thereof to the centerline of Steven Kole Court (Kole Drive); Thence Westerly along said centerline to the Eastern boundary line of Lot 14 of aforesaid Holliday Hills Subdivision Plat 8; Thence Southerly along said Eastern boundary line of said Lot 14 and the East line of Lots 33, 34 and 35 of said Holliday Hills Subdivision Plat 8 to the North line of Holliday Hills Subdivision Plat 4 per plat recorded Plat Book 7, Page 165 in the Cooper County, Missouri land records and being the Southeast

corner of Lot 35 of said Holliday Hills Subdivision Plat 8; Thence Westerly along said North line of said Holliday Hills Subdivision Plat 4 to the Northwest corner thereof and being the Northwest corner of Lot 8 of said Holliday Hills Subdivision Plat 4; Thence Southerly along the West line of said Lot 8 of Holliday Hills Plat 4 to the Northwest corner of Lot 28 of Holliday Hills Subdivision Plat 3 per plat recorded in Plat Book 7, Page 156 in the Cooper County, Missouri land records and being the most Southern corner of said Lot 8 of aforesaid Holliday Hills Subdivision Plat 4; Thence Southeasterly along the West line of said Lot 28 and the West line of Lots 29, 44, 45, 46, and 47 to the Southwest corner of said Lot 47; Thence Southwesterly along the Southwest projection of said West line of said Lot 47 to the Northwest corner of Lot 48 of said Holliday Hills Subdivision Plat 3; Thence Southwesterly along said West line of said Lot 48 to the Southwest line of said Holliday Hills Subdivision Plat 3 at the Southwest or most Western corner of said Lot 48; Thence Southeasterly along said Southwest line to the Southeast corner of Lot 68 of said Holliday Hills Subdivision Plat 3; Thence Northeasterly along said Eastern boundary line of said Lot 68 and Lots 69, 70, and 71 to a point on said East line of Lot 71 from which the Southeast corner of said Lot 71 bears South 06°10' West a distance of 41.81 feet; Thence Easterly along the North line of a tract of land conveyed to Charles Loesing and Patricia Loesing by deed recorded in Book 546, Page 465 in the Cooper County, Missouri land records to its intersection with the Southwesterly projection of the Southeast line of Lots 5, 6 & 7 of Loesing Addition Plat 1 per plat recorded in Plat Book 8, Page 210 in the Cooper County, Missouri land records; Thence Northeasterly along said Southwesterly projection and the Southeast line of said Lot 5, 6, & 7 to the West right-of-way line of Missouri State Highway '87' and being the Southeast corner of said Loesing Addition Plat 1; Thence Southerly along said right-of-way line to the intersection of said right-of-way line with the South line of aforesaid Section 17, Township 48 North, Range 16 West; Thence Westerly along said South line of Section 17 and the South line of aforesaid Section 18 Township 48 North, Range 16 West to the North line of Missouri State Highway 'U' in the Southeast Quarter of said Section 18; Thence Westerly along said North line of Highway 'U' to the intersection of said North line with the South line of Doyle Road; Thence Westerly along said South line of Doyle Road to the intersection of said South line with the East right-of-way line of Missouri State Highway 'B'; Thence Northerly along said right-of-way line to the Southwest corner of a tract of land conveyed to RCB Properties of Central Missouri, L.L.C. by deed recorded as Document No. 2013-2028 in the Cooper County, Missouri land records; Thence Easterly along the Southern boundary line of said RCB Properties of Central Missouri, L.L.C. tract to the Southeast corner thereof in the Northwest Quarter of aforesaid Section 13, Township 48 North, Range 17 West; Thence Northerly along the East line of said RCB Properties of Central Missouri, L.L.C. tract to the South line of a tract of land conveyed to George B. Tedrow and Carolyn L. Tedrow, his wife, by deed recorded in Book 137, Page 440 in the Cooper County, Missouri land records; Thence Westerly along the South line of said Tedrow tract to the Southwest corner thereof; Thence Northerly along the West line of said Tedrow tract and the Northerly projection thereof to the North right-of-way line of Missouri State Highway '70' ; Thence Westerly along said North right-of-way line to its intersection with the West line of a tract of land conveyed to Louise Cary in a Judgement recorded in Book 414, Page 164 in the Cooper County, Missouri land records and being in the Southeast Quarter of Section 11, Township 48 North, Range 17 West; Thence Northerly and Westerly along the Western boundary line of said Cary tract to the aforesaid East right-of-way line Missouri State Highway 'B'; Thence Northerly along said right-of-way line to the Northwest corner of a tract of land conveyed to Cooper County Community Hospital LLC, A Delaware limited liability company, by deed recorded as Document No. 2018-0275 in the Cooper County, Missouri land records; Thence Easterly along the North line of said Cooper County Community Hospital LLC tract to the East line of Section 11, Township 48 North, Range 17 West and being the Northeast corner of said Cooper County Community Hospital LLC tract; Thence Northerly along said East line to the Northwest corner of a tract of land conveyed to Donald E. and Diana Foster by deed recorded in Book 220, Page 343 in the Cooper County, Missouri land records; Thence Northeasterly along the North line of said

Foster tract to the West line of Rankin Mill Lane and being the Northeast corner of said Foster tract; Thence Southeasterly diagonally across said Rankin Mill Lane to the most Western corner of a tract of land conveyed to Edward Oswald, II by deed recorded as Document No. 2016-138 in the Cooper County, Missouri land records; Thence Northerly along the Western boundary line of said Oswald tract to the South line of Woodland Park Plat 2 per plat recorded in Plat Book 8, Page 15 in the Cooper County, Missouri land records; Thence Easterly along said South line to the Southeast corner thereof and being the Southeast corner of Lot 28 of said Woodland Park Plat 2; Thence Northerly along the East line of said Woodland Park Plat 2 along the East line of said Lot 28 and Lots 27, 26, 25, 24, 23, 22, 21 and 20 to the South line of aforesaid Section 1, Township 48 North, Range 17 West and being the Northeast corner of said Lot 20; Thence Westerly along said South line to the Southwest corner thereof; Thence Northerly along said West line to the point of beginning.

Co-Mo and Ameren Boundary - Cooper County
Boonville Area

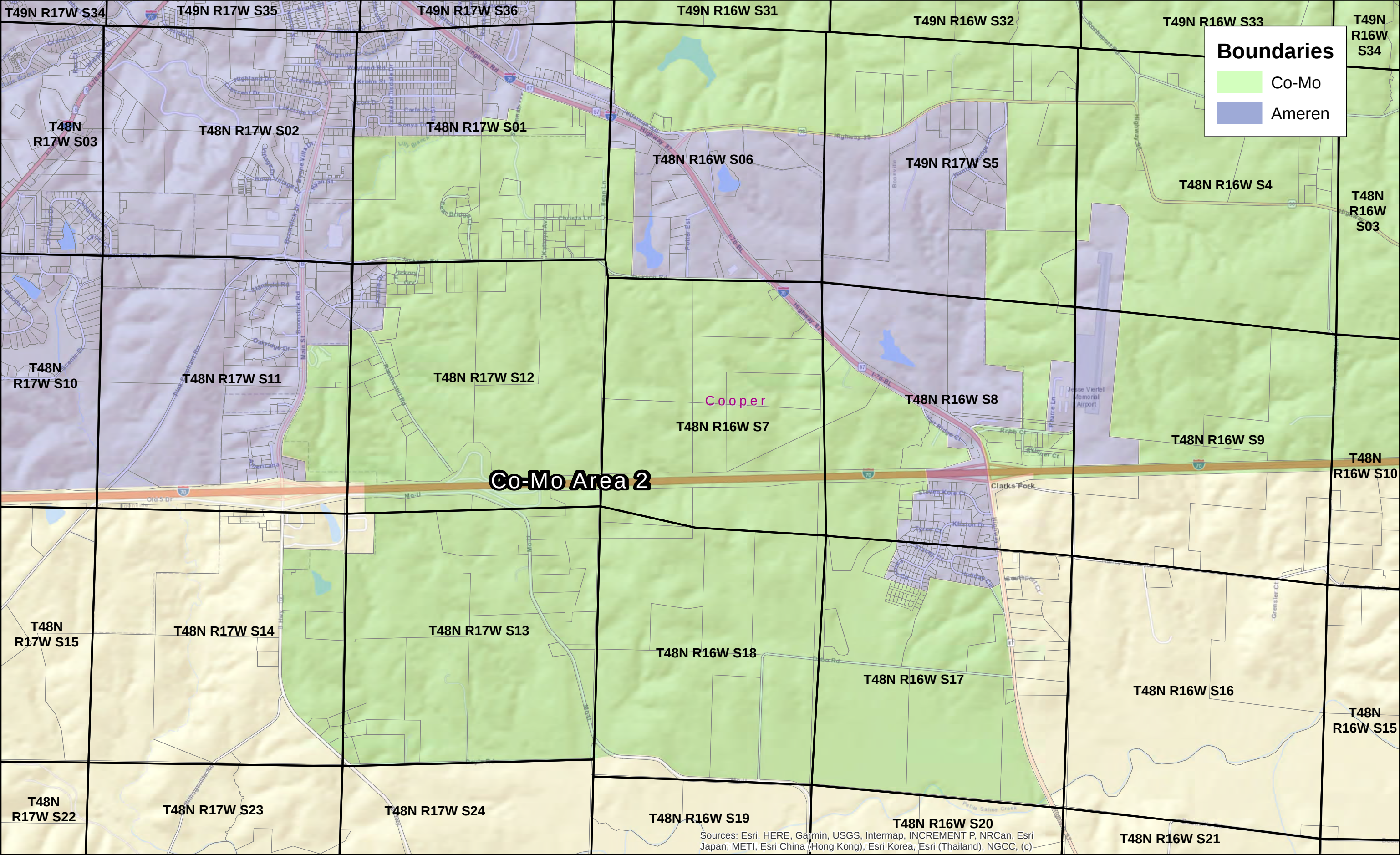
Co-Mo Electric Cooperative and
Union Electric Company d/b/a Ameren Missouri



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)



Boonville Area - Co-Mo Area 2



Cooper County Co-MO Boundary Description

(Co-MO Area 3)

Sections 3, 4, 5, 6, 7, 8 & 9 and U.S. Survey Nos. 2623, 2624, 2718, 2836, & 2870, Township 48 North, Range 15 West, U.S. Survey Nos. 2734, 2926, 2545, 2869, 2794, 2807, 2878 and Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 & 12, Township 48 North, Range 16 West, U. S. Survey Nos. 2554, 2837, 2585, 2584 and Sections 29, 30, 31, 32, 33, 34, 35 & 36, Township 49 North, Range 16 West, and Sections 31, 32, 33 & 34 and U.S. Survey Nos. 2781, 2797, 2718, 2749, 2623, Township 49 North, Range 15 West, of the Fifth Principal Meridian and being more particularly described as follows: Beginning at the Southwest corner of aforesaid Section 30, Township 49 North, Range 16 West; Thence Northerly along the West line of said Section 30 to the centerline of the Missouri River in the Southwest Quarter of said Section 30; Thence Easterly along said centerline to the intersection of said centerline with the South right-of-way line of Interstate Highway No. '70' in the Southeast Quarter of aforesaid Section 34, Township 49 North, Range 15 West; Thence Southwesterly along said right-of-way line to the intersection of said right-of-way line with the Northeast right-of-way line of Missouri State Highway No. '87' in the Southeast Quarter of Section 8, Township 48 North, Range 16 West; Thence Northwesterly along said right-of-way line of said Missouri State Highway '87' to the intersection of said right-of-way line with the North line of Pearre Lane in said Southeast Quarter of aforesaid Section 8, Township 48 North, Range 16 West; Thence Easterly along said North line of Pearre Lane to the Southeast corner of a tract of land conveyed to the City of Boonville, Missouri, a Municipal Facility, of the County of Cooper, State of Missouri by deed recorded as Document No. 2016-2984 in the Cooper County, Missouri land records; Thence Northerly and Westerly along the Eastern boundary line of said City of Boonville tract to the South line of aforesaid Section 5, Township 48 North, Range 16 West and being the Northeast corner of said City of Boonville tract; Thence Westerly along said South line to the Southwest corner of a 158.98 acre, more or less, tract of land conveyed to Troy Thurman Construction Company, Inc., by deed recorded as Document No. 2020-0685 in the Cooper County, Missouri land records; Thence Northerly along the Western boundary line of said 158.98 acre tract conveyed to Thurman Construction Company, Inc. tract to the South line of Hunters Ridge Subdivision per plat recorded in Book 7, Page 370 in the Cooper County, Missouri land records and being a corner of said Thurman Construction Company, Inc., tract; Thence Easterly along said South line to the Southeast corner thereof; Thence Northerly along the East line of said Hunters Ridge Subdivision to the South right-of-way line of Missouri State Highway '98'; Thence Westerly along said South right-of-way line of said Missouri State Highway '98' to the Northwest corner of a tract of land conveyed to Laurence E. Smith, Trust by deed recorded in Book 356, Page 316 in the Cooper County, Missouri land records and being the Northeast corner of a tract of land conveyed to Randall J. Potter by deed recorded in Book 499, Page 360 in said land records; Thence diagonally across Jefferson Road to the North line of said Jefferson Road at the Southeast corner of a tract of land conveyed to Peggy Cook and Dickie Rohlfing by deed recorded in Book 562, Page 350 in the Cooper County, Missouri land records; Thence Northwesterly along said North line of Jefferson Road to the Southeast corner of a tract of land conveyed to Gregory C. Thoma by deed recorded as Book 472, Page 32 in the Cooper County, Missouri land records; Thence Northerly along the East line of said Thoma tract to a corner of the City limits of the City of Boonville, Missouri per Ordinance #4324 recorded as Document No. 2015-1964 in the Cooper County, Missouri land records in the Northwest Quarter of aforesaid Section 2, Township 48 North, Range 16 West; Thence Northwesterly along said line of Boonville City limits line recorded as Document No. 2015-1964 to the City limits of the City of Boonville, Missouri as approved on August 30, 1927; Thence Northerly along said line of the City limits to the City of Boonville approved on August 30, 1927 to the intersection of said line with the South line of Rocheport Road; Thence Easterly along said South line of Rocheport Road in the Southeast Quarter of the Northeast Quarter of aforesaid Section 36, Township 49 North, Range 17 West; Thence Easterly

along said South line to the East line of said Section 36, Township 49 North, Range 17 West; Thence Northerly along said East line to the point of beginning.

-BUT NOT-

A tract of 72.68 acres of land in part in Section 4 and Section 9, Township 48 N, Range 16 W, west of the 5th principal meridian, Cooper County, Missouri, described as follows: The point of beginning being at the northwest corner of Section 9, lying on the west lines of the tract; thence north on a bearing of N 0 degrees 46 minutes 33 seconds W, along the west line of Section 4, a distance of 1,427.02 feet; thence east on a bearing of S 85 degrees 23 minutes 54 seconds E, a distance of 912.00 feet; thence south on a bearing of S 3 degrees 23 minutes 30 seconds W, a distance of 4,087.70 feet to the south line of the NW 1/4 of said Section 9; thence west on a bearing of N 85 degrees 23 minutes 54 seconds W, a distance of 650.00 feet along the south line of the NW 1/4 of said Section 9 to the southwest corner of the NW 1/4 of said Section 9; thence north along the west line of said Section 9 on a bearing of N 0 degrees 00 minutes 00 seconds W, a distance of 2,674.67 feet to the point of beginning.

-NOR-

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 16 WEST, OF THE FIFTH PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER SECTION, SAID POINT BEING A FOUND STONE; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, (THIS AND ALL BEARINGS REFERRED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 2526.59 FEET TO A POINT, SAID POINT BEING AN IRON BAR AND CAP STAMPED LS 189, AND LYING 138.68 FEET NORTHERLY OF AN IRON BAR AND CAP (STAMPED LS 189) FOUND AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 8, AS MEASURED ALONG THE EASTERLY LINE OF SAID NORTHEAST QUARTER AND SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE NEW MADRID SURVEY NUMBER 2878 AS REFERENCED BY A SURVEY RECORDED IN THE SURVEY RECORD BOOK 7 AT PAGE 95, AND SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ON A BEARING OF NORTH 84 DEGREES 21 MINUTES 39 SECONDS WEST ALONG THE NORTH LINE OF SAID NEW MADRID SURVEY NUMBER 2878, A DISTANCE OF 591.86 FEET TO A POINT ON SAID NORTH LINE; THENCE ON A BEARING OF NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST, A DISTANCE OF 1329.90 FEET TO A POINT; THENCE ON A BEARING OF SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 512.50 FEET TO A POINT ON THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 8; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST ALONG SAID EASTERLY QUARTER SECTION LINE, A DISTANCE OF 1341.24 FEET, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF CONTAINS 736,596 SQUARE FEET, OR 16.910 ACRES, MORE OR LESS.

~~NOR~~

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 16 WEST, COUNTY OF COOPER, STATE OF MISSOURI, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER SECTION, SAID POINT BEING A FOUND STONE; THENCE

ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, (THIS AND ALL BEARINGS REFERRED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 2617.77 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF THE EASTERLY LINE OF SAID NORTHEAST QUARTER AND THE NORTHERLY RIGHT-OF-WAY LINE OF PEARRE ROAD AS IT NOW EXISTS, SAID NORTHERLY RIGHT-OF-WAY LINE DESCRIBED IN A WARRANTY DEED FROM S.A. PEARRE AND GOLDIE PEARRE, HUSBAND AND WIFE, TO THE CITY OF BOONVILLE, DATED AUGUST 17, 1973 AND RECORDED IN BOOK 149 AT PAGE 83 IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI, SAID POINT LYING 47.50 FEET NORTHERLY OF AN IRON BAR AND CAP (STAMPED LS 189) FOUND AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 8, AS MEASURED ALONG SAID EASTERLY LINE OF THE NORTHEAST QUARTER, SAID POINT ALSO BEING THE POINT OF INTERSECTION WITH A NON-TANGENT CURVE, THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 205.00 FEET, A CENTRAL ANGLE OF 52 DEGREES 27 MINUTES 40 SECONDS AND AN INITIAL TANGENT BEARING OF SOUTH 42 DEGREES 39 MINUTES 26 SECONDS WEST, SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 187.70 FEET, SAID ARC SUBTENDED BY A CHORD WHICH BEARS SOUTH 68 DEGREES 53 MINUTES 16 SECONDS WEST, A CHORD DISTANCE OF 181.21 FEET TO A POINT; THENCE ON A BEARING OF NORTH 84 DEGREES 58 MINUTES 57 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 434.14 FEET TO A POINT; THENCE ON A BEARING NORTH 4 DEGREES 46 MINUTES 05 SECONDS EAST, A DISTANCE OF 177.23 FEET TO A POINT; THENCE ON A BEARING OF SOUTH 84 DEGREES 21 MINUTES 39 SECONDS EAST ALONG SAID NORTH LINE OF SAID NEW MADRID SURVEY, NUMBER 2878, A DISTANCE OF 591.86 FEET TO A POINT ON SAID EAST LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 8; THENCE ON A BEARING OF SOUTH 01 DEGREES 22 MINUTES 44 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 91.18 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 99,730 SQUARE FEET, OR 2.290 ACRES, MORE OR LESS.

Nor a fee simple interest in land formerly owned by Jesse Viertel more particularly described as:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 16 WEST AND IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 48 NORTH RANGE 16 WEST OF THE FIFTH PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A STONE CORNER FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE NORTH 00 DEGREES 36 MINUTES 48 SECONDS EAST, (THIS AND ALL OTHER BEARINGS REFERENCED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) ALONG THE WESTERLY LINE OF SAID SECTION

4, A DISTANCE OF 1427.02 FEET TO THE NORTHWEST CORNER OF THE JESSE VIERTEL MEMORIAL AIRPORT BOONVILLE AS DESCRIBED IN A WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE, DATED JULY 20, 1973 AND RECORDED IN BOOK 149 AT PAGE 81, IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI; THENCE SOUTH 84 DEGREES 00 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE OF SAID WARRANTY DEED, A DISTANCE OF 253.57 FEET TO A POINT ON A LINE LYING 400.00 FEET WESTERLY OF AND PARALLEL TO THE EXTENDED CENTERLINE

OF THE RUNWAY OF SAID JESSE VIERTEL MEMORIAL AIRPORT - BOONVILLE AS IT NOW EXISTS, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 814.42 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 600.00 FEET TO A POINT ON A LINE LYING 200.00 FEET EASTERLY OF AND PARALLEL TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY; THENCE SOUTH 40 DEGREES 13 MINUTES 55 SECONDS EAST, A DISTANCE OF 282.84 FEET TO A POINT ON A LINE LYING 400.00 FEET EASTERLY OF AND PARALLEL TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY; THENCE SOUTH 04 DEGREES 46 MINUTES 05 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 2,052.58 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SOUTHWEST QUARTER OF SAID SECTION 4; THENCE CONTINUING SOUTH 04 DEGREES 46 MINUTES 05 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 2655.34 FEET TO A POINT ON THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 9; THENCE NORTH 84 DEGREES 08 MINUTES 43 SECONDS WEST ALONG SAID SOUTHERLY LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 142.66 FEET TO THE SOUTHEAST CORNER OF SAID WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE; THENCE NORTH 04 DEGREES 46 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF SAID WARRANTY DEED, A DISTANCE OF 2655.67 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SOUTHWEST QUARTER OF SAID SECTION 4; THENCE CONTINUING NORTH 04 DEGREES 46 MINUTES 51 SECONDS EAST ALONG SAID EASTERLY LINE, A DISTANCE OF 1421.07 FEET TO THE NORTHEAST CORNER OF SAID WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE; THENCE NORTH 84 DEGREES 00 MINUTES 32 SECONDS WEST ALONG THE NORTHERLY LINE OF SAID WARRANTY DEED, A DISTANCE OF 658.43 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 1,217,977 SQUARE FEET OR 27.961 ACRES MORE OR LESS.

NOR (c) an avigation easement upon and over land owned by Jesse Viertel more particularly described as:

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 16 WEST OF THE PRINCIPAL MERIDIAN, COOPER COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT A STONE CORNER FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE NORTH 00 DEGREES 36 MINUTES 48 SECONDS EAST, (THIS AND ALL OTHER BEARINGS REFERENCED TO IN THIS DESCRIPTION ARE BASED UPON THE MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE) A DISTANCE OF 1427.02 FEET TO THE NORTHWEST CORNER OF THE JESS VIERTEL MEMORIAL AIRPORT - BOONVILLE AS DESCRIBED IN WARRANTY DEED FROM ALMA E. VIERTEL TO THE CITY OF BOONVILLE, DATED JULY 20, 1973 AND RECORDED IN BOOK 149 AT PAGE 81, IN THE OFFICE OF THE RECORDER OF DEEDS, COOPER COUNTY, MISSOURI; THENCE SOUTH 84 DEGREES 00 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE OF SAID WARRANTY DEED, A DISTANCE OF 253.57 FEET TO A POINT ON A LINE LYING 400.00 FEET WESTERLY OF AND PARALLEL TO THE EXTENDED CENTERLINE OF THE RUNWAY OF SAID JESSE VIERTEL MEMORIAL AIRPORT - BOONVILLE AS IT NOW EXISTS; THENCE NORTH 04 DEGREES 46 MINUTES 05 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 814.42 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO

SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 130.01 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 56 MINUTES 33 SECONDS WEST, A DISTANCE OF 803.99 FEET TO A POINT; THENCE SOUTH 85 DEGREES 13 MINUTES 55 SECONDS EAST ALONG A LINE PERPENDICULAR TO SAID EXTENDED CENTERLINE OF SAID EXISTING RUNWAY, A DISTANCE OF 700 FEET TO A POINT; THENCE SOUTH 10 DEGREES 28 MINUTES 43 SECONDS WEST, A DISTANCE OF 867.95 FEET TO A POINT; THENCE ALONG A BEARING OF NORTH 40 DEGREES 13 MINUTES 55 SECONDS WEST, A DISTANCE 90.0 FEET TO A POINT; THENCE ALONG A BEARING OF NORTH 85 DEGREES 13 MINUTES 55 SECONDS WEST ALONG A LINE PERPENDICULAR TO SAID EXTENDED LINE OF SAID EXISTING RUNWAY, A DISTANCE OF 469.99 FEET TO THE POINT OF BEGINNING.

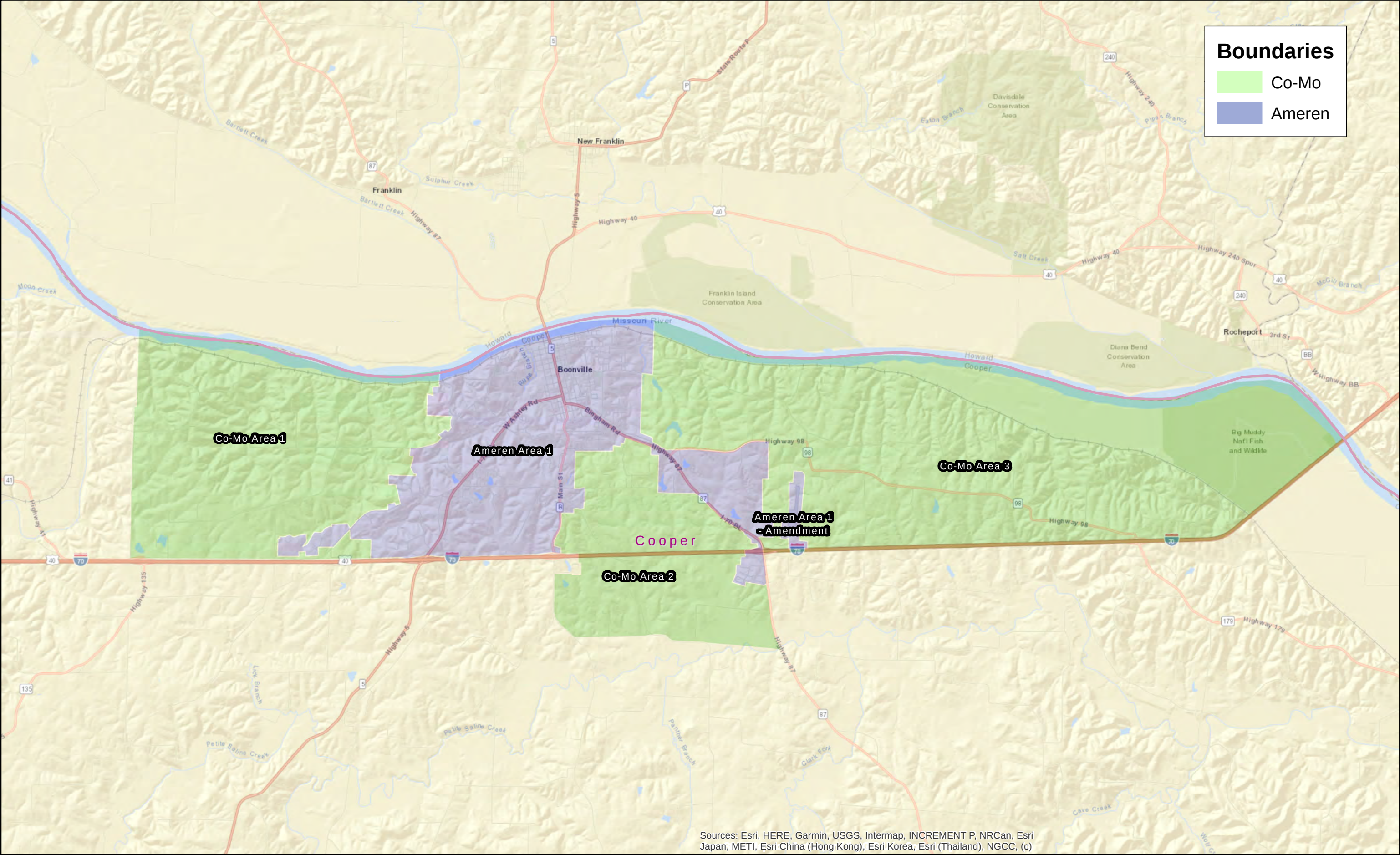
THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 498,228 SQUARE FEET OR 11.438 ACRES MORE OR LESS.

-NOR-

Commencing at the Northwest corner of said Northwest Quarter of the Southwest Quarter of Section 9, thence along the Quarter Section line, South 85 Degrees 32' 30" East 1124 feet to the Southeasterly right-of-way line of a tract described in Deed Book 149, Page 83 and the true point of beginning; thence continuing along said Quarter Section line South 85 Degrees 32' 30" East 1366.35 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said Section 9; thence along the Quarter/Quarter Section line, South 00 Degrees 54' 10" East 516.72 feet to the North right-of-way line of Interstate Highway 70, thence along the North right-of-way line of Interstate Highway 70, South 87 Degrees 06' 05" West 1369.06 feet to the West line of said Section 9; thence along the said West line of Section 9, North 01 Degrees 10' 42" West 683.40 feet to the South right-of-way line of a tract described in Deed Book 149, Page 83; thence along said South right-of-way line on a non-tangent curve to the left having a radius of 255.00 feet, an arc length of 14.14 feet and a chord bearing and distance of North 51 Degrees 07' 50" East 14.13 feet to the point of beginning, containing 19.02 acres.

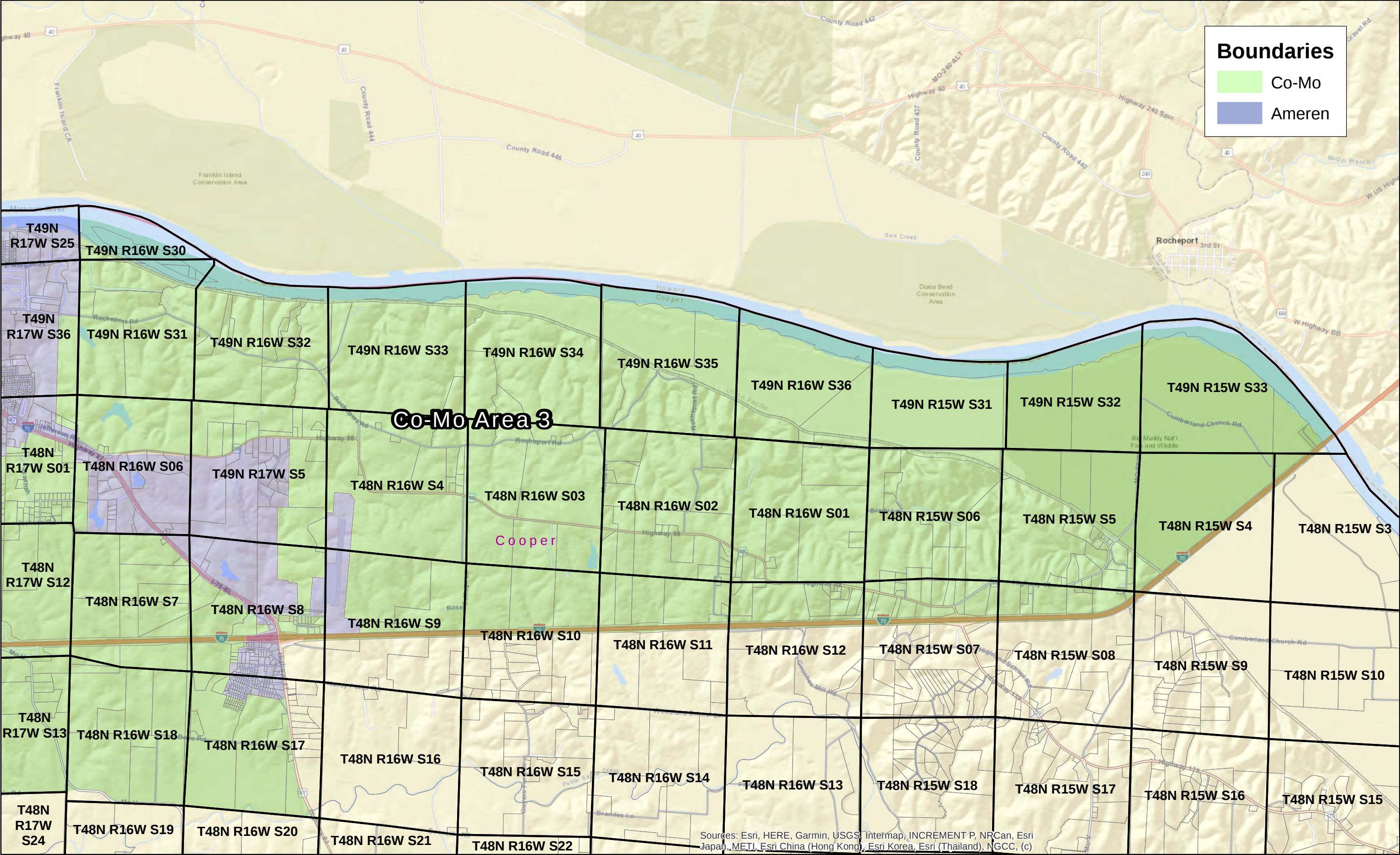
Co-Mo and Ameren Boundary - Cooper County
Boonville Area

Co-Mo Electric Cooperative and
Union Electric Company d/b/a Ameren Missouri



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

Co-Mo and Ameren Boundary - Cooper County
Boonville Area - Co-Mo Area 3



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Co-Mo	)	
Electric Cooperative for Approval of	)	File No. EO-2022-0190
Designated Service Boundaries Within	)	
Portions of Cooper County, Missouri.	)	

STIPULATION AND AGREEMENT

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “the Company”) and Co-Mo Electric Cooperative, Inc. (“Co-Mo”), and for their Stipulation and Agreement (“Stipulation”) resolving this docket in its entirety, respectfully state as follows:¹

A. BACKGROUND

1. On January 18, 2022, Co-Mo initiated this case by filing its application seeking a Commission order authorizing it to serve certain newly annexed land in Boonville, Missouri.
2. Ameren Missouri opposed Co-Mo’s application.
3. As indicated in the Joint Motion to Suspend Procedural Schedule filed by the parties on May 13, 2022, Co-Mo and Ameren Missouri have reached agreement on resolving this case. Their agreement is unopposed by Staff and OPC. As outlined in detail below, Ameren Missouri has agreed to withdraw its opposition to Co-Mo’s application in this docket in consideration of Co-Mo’s and Ameren Missouri’s agreement on the terms and conditions of a Territorial Agreement, which is attached hereto and incorporated herein by this reference as Appendix 1.

B. STIPULATED TERMS

4. Ameren Missouri agrees and consents to an order of the Commission granting Co-Mo the relief sought by Co-Mo’s application in this docket, by which Co-Mo will be the

¹ The Staff and the Office of the Public Counsel (“OPC”) have authorized the Company and Co-Mo to state that it does not oppose approval of this *Stipulation*.

exclusive electric service provider for the Fox Hollow subdivision, the legal description of which is set forth in Appendix E to Co-Mo's application.

5. In consideration of Ameren Missouri's agreement, Co-Mo agrees to the terms and conditions of Appendix 1 hereto, which allocates to Ameren Missouri certain exclusive service areas in portions of Cooper, Cole, and Moniteau Counties, Missouri, and allocates certain exclusive service areas in Cooper County, Missouri to Co-Mo, in addition to the Fox Hollow subdivision.²

6. Ameren Missouri and Co-Mo agree that the order Ameren Missouri has consented to in ¶ 4 and the allocation of the Fox Hollow subdivision to Co-Mo is not detrimental to the public interest. Likewise, Ameren Missouri and Co-Mo agree that the allocation to each other of the service areas outlined in Appendix 1 hereto to each other is not detrimental to the public interest.

C. GENERAL PROVISIONS

7. This *Stipulation* is being entered into solely for the purpose of settling the issues in this docket. No Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this *Stipulation* except as otherwise specifically set forth herein. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this *Stipulation* in any other proceeding, regardless of whether this *Stipulation* is approved.

8. This *Stipulation* has resulted from extensive negotiations among the Signatories

² As indicated in the Territorial Agreement, the parties will submit in this docket final metes and bounds descriptions of the agreed-upon service areas when the work necessary to draw them up are complete.

and the terms hereof are interdependent. In the event the Commission does not approve this *Stipulation*, or approves it with modifications or conditions to which a Signatory objects, then this *Stipulation* shall be null and void, and no Signatory shall be bound by any of its provisions.

9. If the Commission does not approve this *Stipulation* unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this *Stipulation*, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.090, RSMo 2016 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this *Stipulation* had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this *Stipulation* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

10. If the Commission unconditionally accepts the specific terms of this *Stipulation* without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2016; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2016; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2016; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2016; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2020. These waivers apply only to a Commission order respecting this *Stipulation* issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters

not explicitly addressed by this *Stipulation*.

11. The Signatories shall also have the right to provide, at any agenda meeting at which this *Stipulation* is noticed to be considered by the Commission, whatever oral explanation the Commission requests, as does Staff and OPC. The Signatories' oral explanations shall be subject to public disclosure, except to the extent they refer to matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

12. This *Stipulation* contains the entire agreement of the Signatories concerning the issues addressed herein.

13. This *Stipulation* does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the *Stipulation's* approval. Acceptance of this *Stipulation* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this *Stipulation* is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

14. The Signatories agree that this *Stipulation*, except as specifically noted herein, resolves all issues in this case, and that the agreement and its exhibits should be received into the record without the necessity of any witness taking the stand for examination. Further, contingent upon Commission approval of this *Stipulation* without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the pre-filed written testimony of their witnesses.

WHEREFORE, the Signatories respectfully request that the Commission approve this *Stipulation* and the Territorial Agreement attached hereto as Appendix 1 and grant any other and

further relief as it deems just and equitable.

Respectfully submitted,

/s/ James B. Lowery

James B. Lowery, MO Bar #40503
JBL Law, LLC
3406 Whitney Ct.
Columbia, MO 65203
Telephone: (573) 476-0050

**ATTORNEY FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

Respectfully Submitted,

ANDERECK EVANS, LLC

BY: /s/ Megan E. Ray

Megan E. Ray #62037
3816 S. Greystone Court, Suite B
Springfield, MO 65804
(417) 864-6401
(417) 864-4967 fax
mray@lawofficemo.com

**ATTORNEY FOR CO-MO- ELECTRIC
COOPERATIVE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of May 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

/s/James B. Lowery

James B. Lowery

TERRITORIAL AGREEMENT

between

**UNION ELECTRIC COMPANY
d/b/a AMEREN MISSOURI**

and

CO-MO ELECTRIC COOPERATIVE, INC.

TERRITORIAL AGREEMENT

This Agreement is made and entered into as of the 27th day of May, 2022, by and between UNION ELECTRIC COMPANY d/b/a/ Ameren Missouri ("Company") and CO-MO ELECTRIC COOPERATIVE, INC. ("Cooperative"). Company and Cooperative are sometimes referred to herein singularly as a "Party" and collectively as the "Parties."

RECITALS

- A. Company is authorized by law to provide electric service within the State of Missouri, including in portions of Cooper, Cole, and Moniteau Counties;
- B. Cooperative is authorized by law to provide electric service within the State of Missouri, including in portions of Cooper, Cole, and Moniteau Counties;
- C. The Missouri Legislature, by Section 394.312 RSMo. (2016), has authorized electrical corporations and rural electric cooperatives to enter into written territorial agreements;
- D. Company and Cooperative desire to promote the orderly development of the retail electric service within certain areas of the above-listed counties, and to minimize disputes which may result in higher costs in serving the public;
- E. Company and Cooperative desire to reduce the wasteful duplication of Customer service equipment and offer improved level of service to their Customers; and
- F. Company and Cooperative believe that this Agreement is beneficial to the public interest.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.**DEFINITIONS**

In addition to terms defined elsewhere herein, when used herein, the following terms shall have the definitions set forth below. Words importing persons include corporations or other entities, as applicable, and words importing on the singular include the plural and vice versa when the context requires.

- 1.1 **Agreement** shall mean this document including any appendices or exhibits hereto.
- 1.2 **Customer** shall mean any person, partnership, corporation, limited liability company, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity that has requested or is receiving electric service. Any Customer who has requested or is receiving electric service at one structure shall be a new and different Customer at each structure at which electric service has been requested.
- 1.3 **Effective Date** of this Agreement shall be effective date of an order issued by the Missouri Public Service Commission (“Commission”) pursuant to Section 394.312 approving this Agreement.
- 1.4 **Electric Power Provider** shall mean any other electric corporation and/or rural electric cooperative.
- 1.5 **Existing Structure** shall mean any structure that receives electric energy from either: Party, prior to or on, the Effective Date of this Agreement. This term shall also mean (i) any replacement of an Existing Structure (“Replacement Structure”), provided that said Replacement Structure is (a) located completely within the boundary of the property on which the Existing Structure is located, (b) used for the same purpose as the Existing Structure it is replacing, and (c) the Existing Structure is totally removed from the property within six months of completion of the Replacement Structure;
(ii) any maintenance, repair, remodeling, or partial replacement of an existing

structure; and

(iii) Any contiguous expansion of an Existing Structure.

- 1.6 **Laws and Regulations** shall mean all applicable statutes, regulations, codes, laws, licenses, decisions, interpretations, policy statements, regulatory guides, rules, criteria, all license requirements enforced or issued by any government, federal, state, or local, or any governmental agency, authority, or body and industry-recognized guidelines and professional standards.
- 1.7 **New Outbuilding** shall mean, if the Existing Structure's purpose is residential, that is a detached garage, detached storage building, gazebo, detached porch, or similar structure that is not attached to the Existing Structure in question and is not a residence. If the Existing Structure's purpose is agricultural, a "New Outbuilding" is a New Structure that is a detached garage, barn, well, silo, grain bin, or similar structure that is not attached to an Existing Structure in question and is not a residence.
- 1.8 **New Structure** shall mean (i) any Structure that did not receive electric energy from either Party, prior to or on, the Effective Date of this Agreement and (ii) the replacement of an Existing Structure with a Structure that does not satisfy the definition of Existing Structure set forth herein.
- 1.9 **Structure** shall mean an agricultural, residential, commercial, industrial, or other building or a mechanical installation, machinery or apparatus, but shall not include customer-owned meter wiring. A Structure shall include an original structure and any contiguous addition to or expansion thereto. Structure shall not include a metering device or customer-owned meter wiring.

ARTICLE 2.

EXCLUSIVE RIGHT TO SERVE

- 2.1 Pursuant to Section 394.312, this Agreement designates the boundaries of a portion of electric service area of Company and Cooperative in portions of Cooper, Cole, and Moniteau Counties and only for purposes of this Agreement. The Company

agrees not to serve New Structures in the areas described in Article 3, hereinafter referred to as the “Exclusive Service Areas of the Cooperative.” Likewise, Cooperative agrees not to serve New Structures in the areas described in Article 4, hereinafter referred to as the “Exclusive Service Areas of the Company.” The parties recognize and agree that this Agreement shall not apply to any service area not designated as an exclusive service area in Article 3 or 4.

- 2.2 Except as provided expressly herein, after the Effective Date, as between the parties, each party shall have the exclusive right to furnish electric service to all New Structures located within its respective exclusive service area described in Articles 3 and 4 of this Agreement, regardless of the size of the load or the characteristics of the customers' requirements. Except as provided expressly herein, neither party may furnish, make available, render, or extend electric service to New Structures or for use within the exclusive service area of the other party, either directly or indirectly, including through a parent, affiliate, or subsidiary of Company or Cooperative, whether said parent, affiliate, or subsidiary be a corporation, limited liability company, partnership, or cooperative corporation.
- 2.3 Both parties retain the right to furnish electric service to all Existing Structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location.
- 2.4 During the time period between the execution of this Agreement and the Effective Date of this Agreement, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, (1) unless ordered to do so by the Commission or a court of competent jurisdiction, (2) unless it is a necessary part of the provision of service to its customers in other areas; provided, however, that any such construction is within a previously established easement obtained for the purpose of providing service in other areas, or (3) to fulfill the request of Public Water Service District No. 1 for service by Company at 16568 Highway 87, Boonville, Missouri.

- 2.5 The parties recognize and agree that this Agreement places limits on the parties' abilities to distribute retail electric energy. In the event that retail wheeling of unbundled electric energy becomes available in the territory affected by this Agreement, (e.g., retail customers are permitted to choose their suppliers of electric energy), nothing in this Agreement shall be construed to limit in any way the ability of either party to furnish electric energy to Existing Structures located in the exclusive service area of the other party; provided, however, that the electric energy shall be delivered to said Structures by means of the electric distribution facilities of the party in whose exclusive service area the Structures are located. Further, in the event changes in this Agreement are required due to retail wheeling of unbundled electric energy becoming available in the territory affected by this Agreement, both parties agree to negotiate in good faith changes to this Agreement with the intention of maintaining the benefits of their previous bargain to the extent practicable. The parties further agree to cooperate in obtaining the Commission's approval of any such modified agreement, if necessary, by making a joint application requesting such Commission approval and any other required filings related thereto.
- 2.6 In the event that a New Structure is located on the territorial boundary between the Cooperative's and the Company's service territory as described in this Agreement and supporting exhibits, the New Structure shall be served by the party whose territory includes the point at which the electrical service enters the New Structure.
- 2.7 A party may provide electric service to a New Outbuilding located in the exclusive service area of the other party, so long as (i) the New Outbuilding is located within the contiguous tract of land on which that party's Customer's Structure is located, and the New Outbuilding shall not be used for commercial or industrial purposes or (ii) the other party consents in writing. This section shall not apply to a Customer who receives electric service from both Company and Cooperative on the same tract of land, and requests additional electric service. The New Outbuildings for these customers shall be served by the designated exclusive

service provider, unless the Customer, Company, and Cooperative agree otherwise and follow the procedures set out in Article 7.

- 2.8 When the parties cannot agree on the boundaries of the service area as described within this Agreement, they may, by mutual consent of all parties involved, petition the Commission to determine the boundaries and such determination shall be binding on all parties.
- 2.9 This Agreement does not purport to affect the rights of any Electric Power Provider.

ARTICLE 3.

EXCLUSIVE SERVICE AREA OF COOPERATIVE

This agreement concerns only the properties identified herein by the Cooperative and the Company. For the purposes of this Agreement, the Exclusive Service Area of Cooperative, as between the parties under this Agreement, shall be the area in Cooper County, Missouri depicted on Exhibit A attached hereto and incorporated herein. The Parties agree to prepare an addendum to Exhibit A and to file the same with the Commission containing a metes and bounds description of said area which, upon its filing with the Commission, shall become a part hereof as if fully set forth herein. The description will be prepared by a licensed surveyor mutually agreeable to Company and Cooperative, with each party to pay one-half of the cost of the surveyor's fees.

ARTICLE 4.

EXCLUSIVE SERVICE AREA OF COMPANY

This agreement concerns only the properties identified herein by the Cooperative and the Company. For the purposes of this Agreement, the Exclusive Service Area of Company, as between the parties under this Agreement, shall be the areas in Cooper, Cole, and Moniteau Counties, Missouri depicted on Exhibit B attached hereto and incorporated herein. The Parties agree to prepare an addendum to Exhibit A and to file the same with the Commission containing a metes and bounds description of said areas

which, upon its filing with the Commission, shall become a part hereof as if fully set forth herein. The description will be prepared by a licensed surveyor mutually agreeable to Company and Cooperative, with each party to pay one-half of the cost of the surveyor's fees.

ARTICLE 5.

RIGHT TO CONSTRUCT FACILITIES

This Agreement shall in no way impair or affect either party's right to construct such electric generation, distribution and transmission facilities within the designated exclusive service area of the other as that party deems necessary, appropriate or convenient to provide electric service to its customers not inconsistent with the terms of this Agreement and as otherwise allowed by Laws and Regulations.

ARTICLE 6.

LOCATION OF A STRUCTURE

The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.

ARTICLE 7.

EXCEPTION PROCEDURE

- 7.1 The parties may from time to time agree to allow a New Structure or Existing Structure to receive service from one party even though the Structure is located in the exclusive service territory of another party. Any such agreement shall be made in the form of a mutually agreeable addendum hereto ("Addendum") and conform to all applicable legal and regulatory requirements, including but not limited to Section 394.312. The parties may agree to exceptions on a case-by-case basis or as part of a combined agreement and shall make best efforts to advise Commission staff ("Staff") of any Addendum prior to filing with the Commission, to the extent such a filing is required. Upon filing of any addendum for approval with the Commission, the parties shall file a service copy with the Staff and the Office of the Public Counsel.

- 7.2 Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 394.315, until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an order of the Commission or a court regarding the removal of same.
- 7.3 Each Addendum shall consist of a statement identifying the Structure or Structures implicated, the party to serve the Structure or Structures, the justification for the Addendum, and indicating that the parties support the Addendum. If the Staff, Office of the Public Counsel or other intervenor party does not submit a pleading objecting to the Addendum within forty-five (45) days of the filing thereof, the Addendum shall be deemed approved by the aforesaid parties. Each Addendum shall contain a statement in bold uppercase typeface indicating that the Staff or the Office of the Public Counsel have forty-five (45) days to oppose the Addendum or else the Addendum shall be deemed approved by the aforesaid parties.

ARTICLE 8.

TERM AND CONDITIONS OF PERFORMANCE

- 8.1 **Term of Agreement.** The term of this Agreement shall be perpetual, unless terminated by the Parties in accordance with Article 9, Termination.
- 8.2 **Conditions of Performance.** Performance of the Parties is contingent upon all of the following having occurred, unless such condition is waived, extended or modified by agreement, in writing, signed by an officer of each Party hereto:
- A. all required approvals of both Company's and Cooperative's Board of Directors; and
 - B. approval of this Territorial Agreement by the Commission, which shall, at a minimum, consist of an order (i) approving this Agreement and (ii) a finding that this Agreement does not impair Company's certificates of convenience and necessity, except as specifically limited by this Agreement.

- 8.3 Company and Cooperative agree to undertake all actions reasonably necessary to implement this Agreement. Company and Cooperative will cooperate in presenting a Joint Application showing this Agreement, in total, not to be detrimental to the public interest. Company and Cooperative will share equally in the costs assessed by the Commission for seeking of administrative approval of this Agreement. All other costs will be borne by the respective Party incurring the costs.

ARTICLE 9.

TERMINATION

- 9.1 **Termination Events.** This Agreement and the transactions contemplated by this Agreement may be terminated by mutual consent of Company and Cooperative.
- 9.2 **Effective Date of Termination.** The termination of this Agreement shall be effective on the date the Commission receives a notice, signed by both Company and Cooperative, of their decision to terminate this Agreement.
- 9.3 **Effect of Termination.** If the transactions contemplated by this Agreement are terminated as provided herein, each Party shall pay the costs and expenses incurred by it in connection with this Agreement, and no Party (or any of its officers, directors, employees, agents, attorneys, representatives, or shareholders) shall be liable to any other Party for any costs, expenses, or damages; except as provided herein, neither Party shall have any liability or further obligation to the other Party to this Agreement.

ARTICLE 10.

NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the Parties under this Agreement, shall be sufficient in all respect if given, in writing, and delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving Party at the following address:

If to Cooperative:

CO-MO ELECTRIC COOPERATIVE, INC.
Attention: Aaron Bradshaw
CEO and General Manager
29868 Highway 5, P.O. Box 220
Tipton, MO 65081
Phone: 660-433-6164

If to Company:

UNION ELECTRIC COMPANY
Attention: Ralph ("Chip") Webb
Director, Central Missouri Division
1310 Industrial Dr.
Jefferson City, MO 65102
Phone: 574-681-7100

or to such other address as such Party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery or fax, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail.

ARTICLE 11.

MISCELLANEOUS

- 11.1 **Assignment.** This Agreement shall be binding on the Parties and all subsidiaries, successors, assigns and corporate parents or affiliates of Company and Cooperative. Neither Party shall make any assignment of any of its rights or interests under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, and approval of the Commission. Notwithstanding the foregoing, in the event of a merger, corporate reorganization, or corporate restructuring of a Party, said Party may assign this Agreement to the corporate entity responsible for providing distribution-level electric service in the area covered by this Agreement and the consent of the other Party shall be deemed to be given. The consenting Party or Party whose consent is deemed to be given shall cooperate in obtaining approval of the assignment by (a) participating in the joint application requesting Commission approval of the assignment and (b) providing an affidavit, stating that it consents to the Assignment, for inclusion in such application.
- 11.2 **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with, and its validity shall be determined under, the laws of the State of Missouri, without giving effect to its principles reflecting conflicts of laws.

- 11.3 **Amendments.** No modification, amendment, deletion, or other change in this Agreement or the boundaries described in the Agreement shall be effective for any purpose, unless specifically set forth, in writing, and signed by both Parties and approved by the Commission.
- 11.4 **Headings.** Headings and titles contained in this Agreement are included for convenience only and shall not be considered for purposes of interpretation of this Agreement.
- 11.5 **Impact of Commission or Court Orders.** If the Commission does not approve the provisions of this Agreement, then it shall be nullified and of no legal effect between the Parties. Further, if any part of this Agreement is declared invalid or void by a Court or agency of competent jurisdiction, then the whole Agreement shall be deemed invalid and void.
- 11.6 **Survival.** Obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.
- 11.7 **No Waiver.** If a Party has waived a right under this Agreement on any one or more occasions, such action shall not operate as a waiver of any right under this Agreement on any other occasion. Likewise, if a Party has failed to require strict performance of an obligation under this Agreement, such action shall not release the other Party from any other obligation under this Agreement, or the same obligation on any other occasion.
- 11.8 **Further Assurances.** The Parties shall execute such other documents and perform such other acts as may reasonably be necessary in order to give full effect to this Agreement.
- 11.9 **Company's Service Territory Outside This Agreement.** Company has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Company will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the

business of retail sales of electricity shall apply without regard to this Agreement.

11.10 Cooperative's Service Territory Outside This Agreement. Cooperative has service territories outside of the areas covered by this Agreement. For service outside of the areas described by this Agreement, Cooperative will continue to operate without regard to this Agreement. The principles of law, rules and regulations applicable to the business of retail sales of electricity shall apply without regard to this Agreement.

11.11 Expenses. Except as otherwise expressly provided herein, all expenses incurred by the Parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the closing of the transactions contemplated hereby, including, without limitation, the fees and expenses of agents, representatives, counsel and accountants employed by any such Party, shall be borne solely and entirely by the Party which has incurred same.

11.12 Other Products and Services Not Affected. This Agreement is limited to the distribution of electricity and shall in no way affect either Party's right to offer other products and services, including, but not limited to, gas service and internet service, to customers located in the Exclusive Service Area of the other Party. Neither shall this Agreement limit in any way a Party's right to construct such non-electric distribution facilities within the designated Electric Service Area of the other, as that Party deems necessary, appropriate or convenient to provide other non-electric distribution service to its customers.

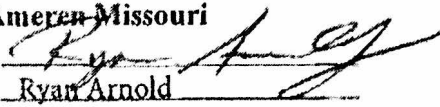
11.13 Entire Agreement. This contract constitutes the entire agreement between the Parties relating to the allocation of service rights in the territory described herein. If the Commission does not approve this Agreement or fails to approve or rejects any portion of this Agreement, then the entire Agreement shall be nullified and of no legal effect. Further, if any part of this Agreement is declared invalid or void by a Court or other agency with competent jurisdiction, then the whole Agreement shall be deemed invalid and void.

The Parties have entered into this Agreement as evidenced below by the signature of their

duly authorized representatives as of the date set forth on the first page hereof.

UNION ELECTRIC COMPANY

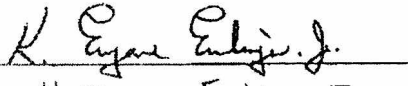
d/b/a Ameren Missouri

By Name Ryan ArnoldTitle Vice President, Division Operations

Attest:

By: 

Secretary

**CO-MO ELECTRIC
COOPERATIVE, INC.**By Name K. Eugene Eulinger, Jr.Title President

Attest:

By: 

Secretary

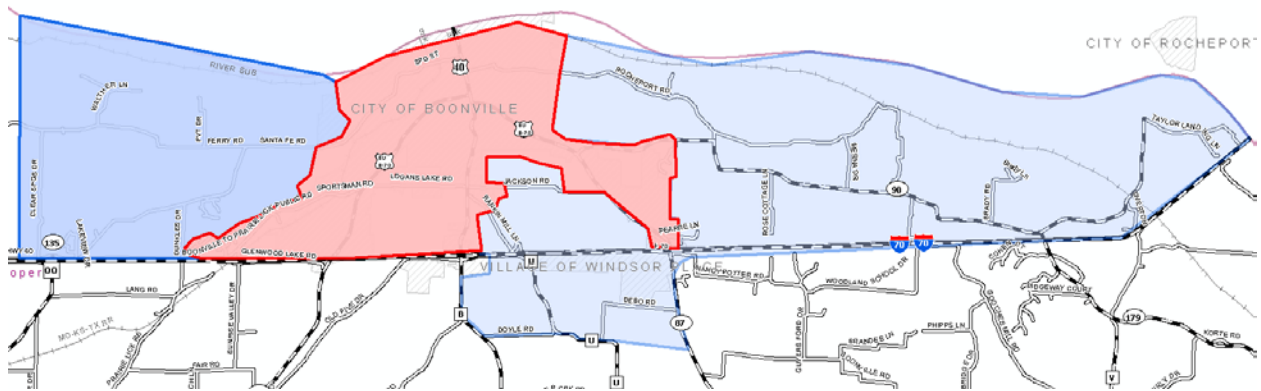
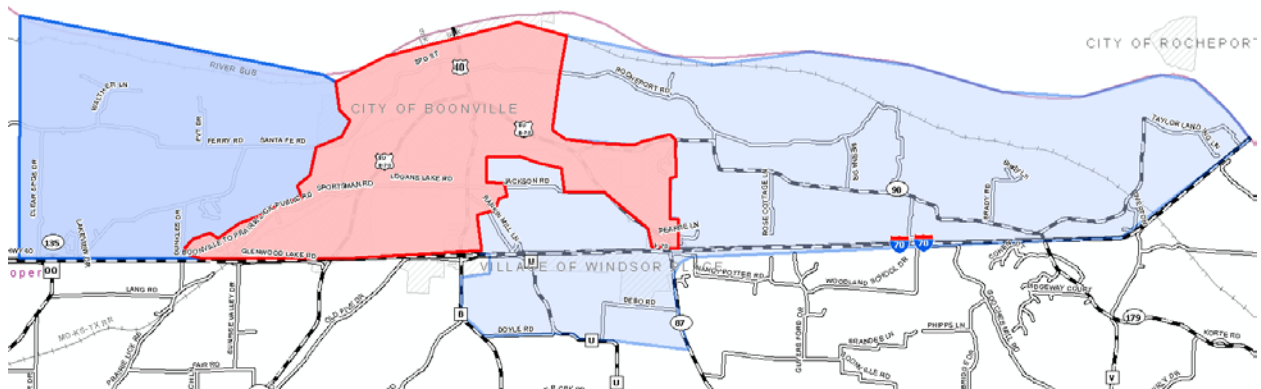
Exhibit A**Exclusive Service Territory of
Co-Mo Electric Cooperative, Inc.
(Areas Shown in Blue)****Detailed Boonville Territorial Map:**

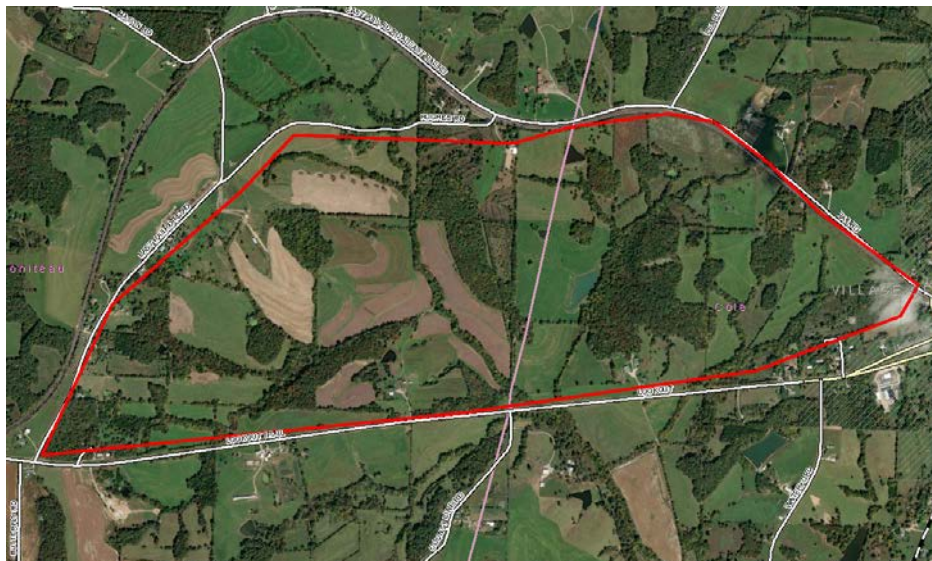
Exhibit B

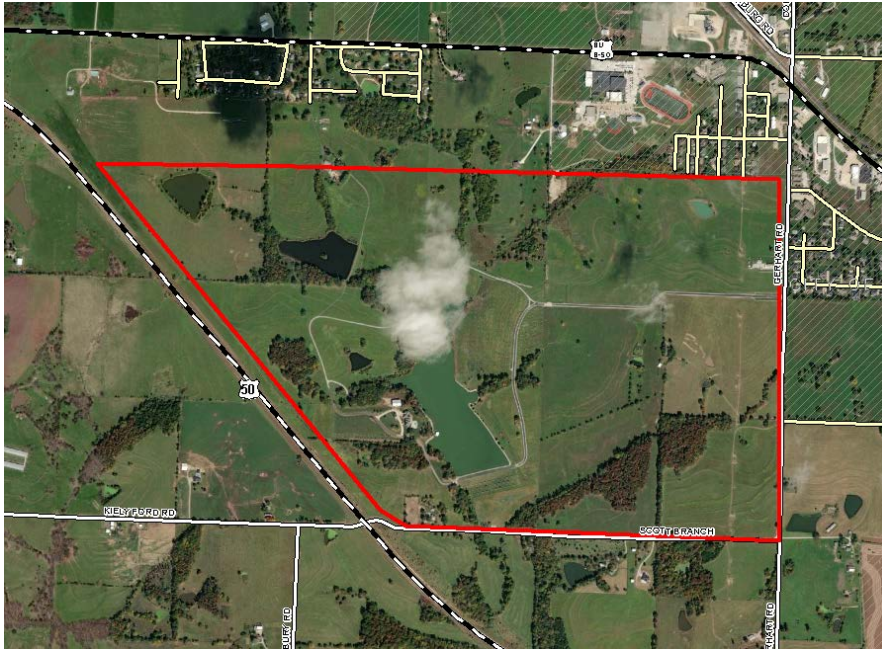
**Exclusive Service Territory of
Union Electric Company
(Area Shown in Red Near Boonville and Areas Outlined in Red in
Aerial Photos for Property West of Centertown and Property Southwest
of California High School)**

Detailed Boonville Territorial Map:



Moniteau/Cole County – Property West of Centertown:



Moniteau County – Property Southwest of California High School:

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Co-Mo	)	
Electric Cooperative for Approval of	)	File No. EO-2022-0332
Designated Service Boundaries Within	)	
Portions of Cooper County, Missouri.	)	

In the Matter of the Application of Co-Mo	)	
Electric Cooperative for Approval of	)	File No. EO-2022-0190
Designated Service Boundaries Within	)	
Portions of Cooper County, Missouri.	)	

**JOINT SUBMISSION OF ADDENDUM TO
TERRITORIAL AGREEMENT**

COME NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) and Co-Mo Electric Cooperative, Inc. (“Co-Mo”) and hereby jointly submit their First Addendum to Territorial Agreement and, with respect thereto, state as follows:

1. Ameren Missouri and Co-Mo are parties to a Stipulation and Agreement submitted in File No. EO-2022-0190 on May 27, 2022 (the “Stipulation”). Appendix 1 to the Stipulation is a May 27, 2022 Territorial Agreement (the “Agreement”) among Ameren Missouri and Co-Mo. Exhibit A to the Agreement reflects maps of the territories allocated by the Agreement to each of Ameren Missouri and Co-Mo. The Agreement provides for a later submission of legal descriptions of those areas.

2. Ameren Missouri and Co-Mo submitted the above-referenced legal descriptions to the Commission in File No. EO-2022-0332,¹ which is a separate docket arising from File No. EO-2022-0190 in which Ameren Missouri and Co-Mo seek approval of the Agreement.

3. One of the areas in Cooper County, Missouri allocated to Co-Mo by the Agreement and described in detail in the Joint Submission as Co-Mo Area 1 includes land owned by the City

¹ See Joint Submission of Legal Descriptions (“Joint Submission”).

of Boonville, Missouri which comprises the existing City of Boonville Airport and land adjacent thereto owned by the City.²

4. Ameren Missouri and Co-Mo have agreed, given Ameren Missouri's current service to the Boonville Airport and its continuing right as provided by law to serve existing structures (or replacements of them) at the Boonville Airport, that the public interest supports amending the Agreement to allow Ameren Missouri to serve any additional structures that might be erected on the Boonville Airport property.

5. Therefore, Ameren Missouri and Co-Mo have executed the attached First Addendum to Territorial Agreement, the sole purpose of which is to exclude the Boonville Airport property from Co-Mo Area 3 in Cooper County, Missouri, and to include the Boonville Airport property in Ameren Area 1 in Cooper County, Missouri. To that end, the attached First Addendum to Territorial Agreement includes a First Amended Exhibit A which modifies the legal descriptions and the maps contained in the Joint Submission to exclude the Boonville Airport property from Co-Mo Area 3 in Cooper County, Missouri, and to include the Boonville Airport property in Ameren Area 1 in Cooper County, Missouri.

WHEREFORE, Ameren Missouri and Co-Mo pray that the Commission make and enter its order approving the Stipulation and the Territorial Agreement, as amended by the First Addendum to Territorial Agreement, and for such other and further relief as is just and appropriate under the circumstances.

Respectfully submitted,

/s/ **James B. Lowery**

James B. Lowery, MO Bar #40503

JBL Law, LLC

3406 Whitney Ct.

² The City may expand the Boonville Airport in the future, including the erection of additional structures. In this regard, Ameren Missouri and Co-Mo have agreed that Ameren Missouri would also provide electric service to any expanded airport and will submit the legal descriptions of such additional land, if it is acquired, to the Commission.

Columbia, MO 65203
Telephone: (573) 476-0050

**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

/s/ Megan E. McCord

Megan E. McCord, Mo. Bar #62037

Friel, McCord & Smiley, LLC

P.O. Box 14287

Springfield, MO 65814

Phone: (417) 227-8405

mmccord@reclawfirm.com

**ATTORNEYS FOR CO-MO ELECTRIC
COOPERATIVE, INC.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of October 2022, served the foregoing
either by e-mail to all counsel of record.

/s/James B. Lowery

James B. Lowery

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire	)	
Missouri, Inc. d/b/a Spire for a Certificate of	)	
Convenience and Necessity to Construct,	)	
Install, Own, Operate, Maintain, and	)	
Otherwise Control and Manage a Natural	)	<u>File No. GA-2023-0038</u>
Gas Distribution System in and around the	)	
City of Oronogo in Jasper County, Missouri	)	
as an Expansion of its Existing Certificated	)	
Areas	)	

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.1. Public interest

§43. Gas

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§43. Gas

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§43. Gas

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

GAS**§3. Certificate of convenience and necessity**

The Commission approved an electric utility's application to expand its service area in the City of Oronogo, Missouri.

§3. Certificate of convenience and necessity

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

The Commission determined that the acquisition of the City of Oronogo's natural gas system by Spire Missouri Inc. promoted the public interest as evidenced by a vote of the citizens of the City of Oronogo.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day
of January, 2023.

In the Matter of the Application of Spire	)	
Missouri, Inc. d/b/a Spire for a Certificate of	)	
Convenience and Necessity to Construct,	)	
Install, Own, Operate, Maintain, and	)	
Otherwise Control and Manage a Natural	)	<u>File No. GA-2023-0038</u>
Gas Distribution System in and around the	)	
City of Oronogo in Jasper County, Missouri	)	
as an Expansion of its Existing Certificated	)	
Areas	)	

**ORDER APPROVING ACQUISITION OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: January 25, 2023

Effective Date: February 24, 2023

On August 5, 2022,¹ Spire Missouri, Inc., d/b/a Spire, filed an application with the Commission seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide natural gas service in and around the City of Oronogo, Jasper County, Missouri, as a further expansion of its existing certificated area (Application). The proposed CCN area would extend service to approximately 318 residential customers and 16 commercial customers. In its Application, Spire also requested that the 60-day notice rule be waived.²

On November 2, 2021, the citizens of Oronogo approved the sale of the city's natural gas distribution system to Spire. On July 11, Oronogo's Board of Alderman passed

¹ Unless otherwise noted, all dates refer to the year 2022.

² 20 CSR 4240-4.017(1).

an ordinance confirming that its voters had approved the sale and approving an Asset Purchase Agreement (APA) with Spire that set out the terms and conditions of the sale to Spire. On July 12, the APA was executed by Spire and Oronogo's mayor.

The Commission directed notice of Spire's application and established an intervention deadline. The Commission received no applications to intervene.

Subsection 393.170.2, RSMo (Supp. 2022), requires Spire to have a CCN, granted by the Commission, prior to providing natural gas service in the Oronogo service area.

The Commission may grant a gas corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."³ The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁴ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁵ Subsection 393.170.3, RSMo (Supp. 2022), also permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Commission has stated five criteria that it uses to determine necessity or convenience:

1. There must be a need for the service;
2. The applicant must be qualified to provide the service;

³ Section 393.170.3, RSMo (Supp. 2022).

⁴ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁵ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.⁶

On December 20, the Staff of the Commission (Staff) filed its *Staff Recommendation for Approval of Certificate of Convenience and Necessity* in which it recommended that the Commission approve the sale of the Oronogo gas distribution system to Spire and grant a CCN for the service areas described in its application, subject to certain conditions. On January 6, 2023, Spire filed a response to Staff's recommendation in which it agreed to Staff's conditions.

Staff's recommendation concludes that Spire's application satisfies the five criteria listed above, which are often referred to as the "Tartan" criteria or factors.

There is a need for the service, as the Oronogo customers approved the sale and desire continued natural gas service. In addition, Spire intends to replace aging infrastructure and bring Oronogo's natural gas distribution system into compliance with existing and new industry standards. Spire is qualified to provide the service, as it already provides natural gas service to approximately 1.2 million customers in the state of Missouri. Spire has the financial ability to provide the service and intends to finance the purchase over the long-term in a manner consistent with its recommended capital structure.

The Application set out estimates and financial assumptions and indicated that Spire intends to charge Oronogo customers the same rates as Spire's customers in its adjoining certificated service areas as established in Spire's recent rate case proceeding,

⁶ *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

File No. GR-2021-0108. Based on the application and Staff's review, the Commission finds that the proposal is economically feasible. Additionally, the proposal promotes the public interest, as evidenced by the Oronogo voters' approval of the sale to Spire.

Based on the application and Staff's recommendation, the Commission concludes that the factors for granting a certificate of convenience and necessity have been satisfied. The Commission further finds Spire's provision of gas service to the area as described in the application is necessary and convenient for the public service. Thus, the Commission will grant Spire a CCN to provide gas service within the area set out in the application, subject to the conditions recommended by Staff.

Finally, the Commission will grant Spire's request for waiver of the 60-day case filing notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Spire's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

THE COMMISSION ORDERS THAT:

1. The sale of the City of Oronogo natural gas distribution system to Spire is approved, pursuant to the provisions of the Asset Purchase Agreement, executed on July 12, 2022.
2. Spire is granted a certificate of convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service for the area of Jasper County, Missouri set forth in Appendix A of Spire's application subject to the following conditions:
 - a. All ratemaking determinations shall be reserved for consideration in Spire's next general rate making proceeding.

b. Spire shall provide an updated legal description of its service area to include the territory added by the granting of this certificate of convenience and necessity. The legal description shall be consistent with the Jasper County Missouri Department of Transportation Highway Map used as a reference in Spire's application.

c. Spire shall file an updated tariff sheet that incorporates the updated legal description of the territory added by the granting of this certificate of convenience and necessity. The legal description shall be consistent with the Jasper County Missouri Department of Transportation Highway Map used as a reference in Spire's application.

3. The sixty-day notice of case filing requirement is waived for good cause found, pursuant to 20 CSR 4240-4.017(1)(D).

4. This order shall become effective on February 24, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of The Empire)
District Gas Company d/b/a Liberty for a Certificate)
of Convenience and Necessity to Construct, Install,)
Own, Operate, Maintain, and Otherwise Control and) **File No. GA-2023-0110**
Manage a Natural Gas Distribution System in and)
Around Platte County, Missouri as an Expansion of)
its Existing Certified Areas)

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§43. Gas

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

GAS

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
January, 2023.

In the Matter of the Application of The Empire	)	
District Gas Company d/b/a Liberty for a Certificate	)	
of Convenience and Necessity to Construct, Install,	)	
Own, Operate, Maintain, and Otherwise Control and	)	<u>File No. GA-2023-0110</u>
Manage a Natural Gas Distribution System in and	)	
Around Platte County, Missouri as an Expansion of	)	
its Existing Certified Areas	)	

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: January 25, 2023

Effective Date: February 24, 2023

Procedural History

On September 21, 2022, The Empire District Gas Company d/b/a Liberty (EDG) filed the above-referenced application. EDG seeks permission and approval and a certificate of convenience and necessity (“CCN”) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Platte County, Missouri, as a further expansion of its existing certificated area. The project will extend service a new development known as Logistics Park. The application further requests a waiver of the Commission’s 60-day notice rule.¹

The Staff of the Commission filed its Recommendation on January 9, 2023. Staff recommends that the Commission grant the certificate, subject to conditions. The conditions are that the Commission should:

¹ Commission Rule 20 CSR 4240-4.017(1).

- reserve all rate making determinations regarding the revenue requirement impact of this service area extension request until Liberty's next general rate making proceeding;
- require EDG to file an updated tariff sheet incorporating the requested Sections for Platte County;
- during its next general rate case, require EDG to provide the Logistics Park acreage development documentation to Staff;
- require that EDG shall hold customers receiving service outside of the requested CCN area harmless of any expenses and investments in excess of billed non-gas revenues, excluding infrastructure system replacement surcharge (ISRS) revenues;
- require EDG to provide an updated list of customers to be referenced for this application.

No party has responded to Staff's Recommendation.

Decision

EDG is a gas corporation and a public utility subject to Commission jurisdiction.²

The Commission may grant a gas corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."³ The Commission has stated five criteria that it will use to make this determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant's proposal must be economically feasible; and
- 5) The service must promote the public interest.⁴

² Section 386.020(18), (43) RSMo 2016.

³ Section 393.170, RSMo. 2016.

⁴ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

Based on the verified pleadings, the Commission finds the application for a certificate of convenience and necessity to provide gas service meets the above listed criteria.⁵ The application will be granted.

Commission Rule 20 CSR 4240-4.017(1)(D) states that a waiver may be granted for good cause. Good cause exists in this case. EDG has had no communication with the office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case, other than those pleadings filed for record. Accordingly, for good cause shown, the Commission waives the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

THE COMMISSION ORDERS THAT:

1. Commission Rule 20 CSR 4240-4.017(1) is waived.
2. EDG is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain gas plant as more particularly described in its application and Staff Recommendation.
3. The certificate of convenience and necessity is subject to the condition that the Commission will reserve all ratemaking determinations regarding the revenue impact of this service area extension request until Spire's next general ratemaking proceeding.
4. EDG shall file an updated tariff sheet incorporating the requested sections for Platte County.
5. During its next general rate case, EDG shall provide the Logistics Park acreage development documentation to Staff.

⁵ The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

6. EDG shall hold customers receiving service outside of the requested CCN area harmless of any expenses and investments in excess of billed non-gas revenues, excluding infrastructure system replacement surcharge (ISRS) revenues.

7. EDG shall provide an updated list of customers to be referenced for this application.

8. This order shall become effective on February 24, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Pridgin, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Foxfire	)	
Utility Company for Authority to Transfer	)	
Certain Water and Sewer Assets Located in	)	<u>File No. WM-2022-0186</u>
Stone County, Missouri to Ozark Clean Water	)	
Company, and in Connection Therewith,	)	
Certain Other Related Transactions	)	

AMENDED REPORT AND ORDER

EXPENSE

§73. Expenses incurred in acquisition of property

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

RATES

§41. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

SEWER

§4. Transfer, lease and sale

The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.

§4. Transfer, lease and sale

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

§7. Jurisdiction and powers of the State Commission

The Commission found that it does not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting, or management of any nonprofit sewer company.

§14. Rates and revenues**§22. Valuation**

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

§15. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

VALUATION**§15. Purchase or sale price****§78. Water****§79. Sewer**

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

§15. Purchase or sale price**§78. Water****§79. Sewer**

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WATER**§4. Transfer, lease and sale**

The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.

§4. Transfer, lease and sale

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

§16. Rates and revenues**§24. Valuation**

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and

self-governance, and enjoy the convenience of local control and enhanced billing benefits.

§17. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Foxfire)
Utility Company for Authority to Transfer)
Certain Water and Sewer Assets Located in)
Stone County, Missouri to Ozark Clean Water)
Company, and in Connection Therewith,)
Certain Other Related Transactions)

File No. WM-2022-0186

AMENDED REPORT AND ORDER

Issue Date: January 25, 2023

Effective Date: February 4, 2023

APPEARANCES

Appearing For Foxfire Utility Company and Ozarks Clean Water Company:

Dean L. Cooper, Attorney at Law,

Jesse Craig, Attorney at Law,

Brydon, Swearingen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for Office of the Public Counsel:

Marc D. Poston, Public Counsel,

Department of Commerce & Insurance

200 Madison St., Suite 650, PO Box. 2230

Jefferson City, MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Scott Stacey, Staff Counsel, Governor Office Building, 200 Madison Street,
Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: Ross Keeling

REPORT AND ORDER

Procedural History

On March 15, 2022,¹ Foxfire Utility Company (Foxfire) filed verified applications pursuant to Section 393.190, RSMo 2016, 20 CSR 4240-2.060, and 20 CSR 4240-10.105 seeking authority to sell its water and sewer assets to Ozark Clean Water Company (OCWC). Foxfire filed an application in File No. SM-2022-0187 concurrently with this case, and filed a motion to consolidate in both cases on the date the cases were filed. The Commission issued its order consolidating the files on March 16. OCWC also filed an application to intervene in both cases on March 15, and the Commission issued its order granting that application to intervene on April 8.

On June 28, the Staff of the Commission (Staff) filed its recommendation, recommending that the Commission approve the transaction, subject to conditions. On July 8, Foxfire and OCWC filed their joint response to Staff's recommendation stating that they do not object to Staff's five conditions, and requested that the Commission issue an order approving the sale of Foxfire's water and sewer assets to OCWC.

The Office of the Public Counsel (OPC) responded to Staff's recommendation on July 8, objecting to the transaction, and stating that the approval of the transfer at the proposed price would be detrimental to the public interest because OCWC would be required to repay the \$1,195,548 acquisition premium over the next twenty years. OPC contended the Foxfire customers are still under the protection of the Commission and

¹ All dates refer to 2022 unless otherwise specified.

urged the Commission to deny the requested transfer of assets. An evidentiary hearing was held on October 25 at 9:00 a.m.

The parties jointly presented two issues to be determined by the Commission concerning Foxfire's application for approval of the sale of its assets to OCWC.

- 1. Should the Commission find that the sale or transfer of Foxfire Utility Company's (a public utility) water and waste water assets to Ozarks Clean Water Company (a nonprofit sewer company under Sections 393.825-393.861, RSMo, and a nonprofit water company under Sections 393.900-393.954, RSMo) is not detrimental to the public interest, and approve the transaction?**
- 2. If the Commission grants approval of the transaction, what conditions, if any, should the Commission impose on such approval?**

At the evidentiary hearing the Commission heard the testimony of four witnesses and received nine exhibits onto the record. Garah F. (Rick) Helms (Helms), President of Foxfire, and David Casaletto (Casaletto), President of the Board of Directors of OCWC, testified on behalf of Foxfire and OCWC, who presented their evidence jointly. Jarrod Robertson (Robertson), Senior Research Data Analyst with the Water and Sewer and Steam Department of the Commission, and Keith Foster (Foster), Utility Regulatory Auditor Supervisor with the Auditing Department of the Commission, testified on behalf of Staff. OPC offered no witnesses.

Foxfire and OCWC, Staff, and OPC all filed post-hearing briefs. On November 30, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument."

On January 3, 2023, OPC filed its Application for Rehearing, and on January 13, 2023, Foxfire and OCWC filed their Response to Application for Rehearing. On January 17, 2023, Foxfire and OCWC filed their Notice of Closing as to Foxfire Utility Company.

After reviewing the filings of the parties, the Commission has decided that some aspects of its Report and Order should be amended to help clarify the basis for its decision. This Amended Report and Order will be effective in ten days. If anyone believes that rehearing, reconsideration, or clarification is needed, they must file a new or renewed application for rehearing, reconsideration, or clarification before the effective date of this order.

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.²

² An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d

1. Foxfire is a Missouri corporation, active and in good standing with the Missouri Secretary of State, with its principal office and place of business at 3478 Smyrna Road, Rogersville, Missouri 65742.³

2. Foxfire currently provides water and sewer service to approximately 258 billed locations within the corporate limits of the Village of Indian Point in Stone County, Missouri, pursuant to certificates of convenience and necessity (CCN) granted by the Commission in File No. WA-95-31.⁴

3. The water and sewer rates approved by the Commission and in effect for the Foxfire systems since December 2002 include: water service at a fixed monthly rate of \$20.10 for the first 2,000 gallons of usage and an additional commodity charge of \$1.36 per 1,000 gallons beyond the first 2,000 gallons, and sewer service at a fixed monthly rate of \$40.22 for the first 2,000 gallons of water used and an additional \$3.21 per 1,000 gallons of water used beyond the first 2,000 gallons.⁵

4. Foxfire water and sewer facilities currently have the capacity to serve approximately 150 additional units.⁶

5. There are currently 30 additional units under construction or under planning that will provide additional units served by OCWC.⁷ Those units can add nearly \$22,000

63, 80 (Mo. App. S.D. 2009). With respect to the appellate standard for reviewing Commission decisions, this case stated, further:

"[I]f substantial evidence supports either of two conflicting factual conclusions, '[we are] bound by the findings of the administrative tribunal.' [citation omitted] The determination of witness credibility is a subject best left to the Commission, 'which is free to believe none, part, or all of [a witness's] testimony.' [citations omitted] We will not re-weigh the evidence presented to the Commission. [citation omitted]."

³ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 6 of 20.

⁴ Ex 2, Helms Direct, p. 3; Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 7 of 20.

⁵ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, pp. 3-4 of 20, and Ex. 300, page 1.

⁶ Ex. 100, Casaletto Direct, p. 5.

⁷ Transcript, pp. 38-39

per year in revenue based on Foxfire's current \$60.32 per month per customer fixed charges alone.

6. Helms is the Director and President of Foxfire. Helms is also the Trustee of the Rick and Janet Helms Revocable Trust dated August 29, 2014, which holds 100% of the shares of Foxfire.⁸

7. Helms was on the Board of OCWC until he resigned in August of 2019.⁹

8. Helms recused himself from OCWC's July 15, 2019, board meeting in which the acquisition of Foxfire was first discussed, and resigned from OCWC's Board of Directors in August of 2019, before the December 31, 2019, vote to purchase Foxfire's assets.¹⁰

9. The Foxfire systems are in very good condition. There is no known need for repairs or immediate investment in the systems and there has been no deferred maintenance.¹¹

10. OCWC is a Missouri 501(c)(3) water and sewer corporation that was formed in March of 2004 for the specific purpose of owning and operating individual and clustered wastewater systems. OCWC was formed in accordance with Sections 393.825 to 393.861, RSMo, and is a not-for-profit corporation with voluntary membership. Membership is gained by applying for and receiving services from OCWC.¹²

11. OCWC was formed during the National Decentralized Onsite Wastewater Demonstration Project at Table Rock Lake to develop solutions to ensure wastewater

⁸ Ex. 1, Helms Direct, p. 1.

⁹ Ex. 1, Helms Direct. p. 7.

¹⁰ *Id.*

¹¹ Ex. 1, Helms Direct, p. 6

¹² Ex. 100, Casaletto Direct, p. 4.

treatment systems are operated properly and efficiently to the benefit of the environment and OCWC members.¹³

12. OCWC currently provides water and sewer service to 2,380 locations, consisting of 1,860 sewer connections, 300 water only and 220 water and sewer connections at the same property, all provided through nine permitted and four non-permitted water systems, 19 permitted sewer systems, one sewer treatment system, two sewer collection systems, and one interceptor sewer that does not require permits.¹⁴

13. OCWC's financial structure is layered to address multiple improvement and maintenance plans for all its properties. OCWC rates include operation, maintenance, administration, overhead, and reserve for repair. Currently, OCWC's Board of Directors has established a reserve account funded at 75% of its annual operation and maintenance budget.¹⁵

14. Casaletto is the President of the OCWC Board of Directors.¹⁶

15. OCWC's Board of Directors is elected by OCWC's customers.¹⁷

16. OCWC is answerable to its members.¹⁸

17. Neither Casaletto, nor any board members, have ever received any compensation from OCWC.¹⁹

18. Foxfire and OCWC have entered into an Agreement for Sale and Purchase of Assets dated December 10, 2019 (Agreement). Pursuant to the Agreement, OCWC

¹³ Ex. 100, Casaletto Direct, p. 1.

¹⁴ *Id.*

¹⁵ *Id.*; Transcript, p. 8: 17-19

¹⁶ Ex. 100, Casaletto Direct, p. 1.

¹⁷ Ex. 200, Robertson Rebuttal, p. 2.

¹⁸ *Id.*

¹⁹ *Id.*

agrees to obtain and acquire substantially all of the water and sewer assets of Foxfire under the terms and provisions described in the Agreement.²⁰

19. Staff conducted a site inspection of the OCWC facility on March 31, 2022, and found Foxfire's systems to be in good condition.²¹

20. The Missouri Department of Natural Resources has informed Staff that it has no outstanding concerns with service issues at any of the current OCWC-run systems.²²

21. The purchase price of the assets transferred in the Agreement is \$1,285,400.00.²³

22. Based upon information in Foxfire's Commission-filed 2021 Annual Report, Staff's calculation of the estimated "rate base" for Foxfire's combined water and sewer service is \$89,852.²⁴

23. The "acquisition premium" is \$1,195,548, which is the amount the purchase price exceeds the estimated rate base.²⁵

24. The \$1,285,400 purchase price includes an approximately \$1.2 million acquisition premium, which is thirteen times over the estimated rate base of approximately \$90,000.²⁶

²⁰ Ex. 100, Casaletto Direct, p. 5.

²¹ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 8 of 20.

²² Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 7 of 20.

²³ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 2 of 20.

²⁴ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 12 of 20.

²⁵ *Id.*

²⁶ Transcript, pp 16:11-17:1.

25. The buyer's annual debt obligation to the seller/financer is \$6,600 per month,²⁷ which is only 40% of Foxfire's revenues at its current rates.²⁸

26. Under the Agreement, the purchase of the assets will be financed over a twenty-year period at an annual interest rate of 2.5%.²⁹

27. The cash flows from the existing rates will be adequate for OCWC to cover the obligation associated with the purchase price and continue to provide quality service to its customers.³⁰

28. OCWC needs no separate financing associated with the transaction.³¹

29. Foxfire's current Commission approved tariffs, approved in conjunction with its CCNs, authorize a 12.75% return on equity and a capital structure designed to produce an 11.63% return for Foxfire's owners.³²

30. OCWC has no profits, and any surplus from annual income stays in the company and goes to the operating budget or is kept as reserve for repair.³³

31. OCWC does not set its rates with a return on equity. No dividends are paid to its owners.³⁴

32. In his testimony, Casaletto proposed to use the existing rates for Foxfire customers for at least one year following the acquisition.³⁵

²⁷ Transcript, p. 21:5-8.

²⁸ Ex. 300, p. 1, and Transcript, p. 21:13-16.

²⁹ Ex. 2, Helms Direct, p. 2. Ex. 100, Casaletto Direct, p. 5.

³⁰ Ex. 101, Casaletto Surrebuttal, p. 5-6.

³¹ Ex. 100, Casaletto Direct, p. 5.

³² File No. WA-95-31, Order Granting Certificate of Convenience and Necessity and Approving Financing, p. 3, and File No. WA-95-31, Order Approving Tariffs.

³³ Transcript. p. 38:1-13. OCWC.

³⁴ Ex. 100, Casaletto Direct, p. 7.

³⁵ Ex. 100, Casaletto Direct, p. 6.

33. An e-mail from Casaletto to the OCWC Board of Directors states OCWC can readily meet its financial obligations with a \$25,000 annual surplus reserved for future repairs at the existing rates.³⁶

34. OCWC has the technical and financial ability to manage the Foxfire systems.³⁷

35. OCWC customers will receive several conveniences not currently available with Foxfire. These benefits include ACH autopayment, e-mail billing, online payments and account histories, text alerts, and a nearby office and drop box for payments.³⁸

36. The contract price of approximately \$1,285,000, results in a per customer price of \$2,491, not including projected growth.³⁹

37. Compilations of transactions in Missouri and Illinois on a per customer basis by certified appraisers, as per 2021, indicate a range of water and sewer system sale prices of \$649 to \$5,263 per customer, with a median of \$3,213 per customer and a mean of \$3,095 per customer.⁴⁰

38. The per customer sales price of \$2,491 in the proposed transaction is within that range.⁴¹

39. Staff found that the transaction is not detrimental to the public interest and recommended approval of the transfer of assets from Foxfire to OCWC.⁴²

40. In its recommendation, Staff recommended approval of the sale and transfer of the assets subject to the following conditions:

³⁶ Ex. 300, Email from Casaletto to the OCWC Board (July 10, 2019).

³⁷ Ex. 200, Robertson Rebuttal, p. 2.

³⁸ Ex. 101, Casaletto Surrebuttal, p. 6.

³⁹ Ex. 101, Casaletto Surrebuttal, p. 5.

⁴⁰ Ex. 101, Casaletto Surrebuttal, p. 5.

⁴¹ Ex. 101, Casaletto Surrebuttal, Schedule DC-s1.

⁴² Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 13 of 20.

- a. Require Foxfire to notify the Commission of closing on the transfer of water and sewer assets to OCWC within five (5) days after closing;
- b. Authorize Foxfire to cease providing service immediately after closing on assets;
- c. If closing on Foxfire's assets does not take place within thirty (30) days following the effective date of the Commission's order, require Foxfire to submit a status report, in File No. WM-2022-0186 within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur;
- d. If Foxfire determines that a transfer of the assets will not occur, require Foxfire to notify the Commission of such; and
- e. After the above notice of transfer of assets to OCWC is received from Foxfire, cancel the CCN applying to Foxfire's Village of Indian Point service area.⁴³

Conclusions of Law

A. The Commission "is a Missouri administrative agency charged with the regulation of all public utilities."⁴⁴

⁴³ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, pp. 4-5 of 20.

⁴⁴ *In Matter of Verified Application and Petition of Liberty Energy (Midstates) Corp.*, 464 S.W.3d 520, 522 (Mo. banc 2015).

B. Foxfire is a “water corporation,” a “sewer corporation,” and a “public utility” as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law.⁴⁵

C. OCWC is a nonprofit sewer and water company formed in accordance with Sections 393.825 through 393.861, RSMo.⁴⁶

D. The Commission does not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting, or management of any nonprofit sewer company.⁴⁷

E. The lawfulness of an order issued by the Commission is determined by whether statutory authority for its issuance exists.⁴⁸ As a creature of statute, an administrative agency’s authority is limited to that given it by the legislature.⁴⁹

F. The Commission has jurisdiction to rule on the application because Section 393.190.1, RSMo, requires that no water or sewer corporation shall sell or transfer its assets without having first secured authorization from the Commission. The Commission must authorize the transfer of a regulated utility’s assets, unless the transfer is shown to be detrimental to the public interest.⁵⁰

G. The Supreme Court of Missouri recognized that “a property owner should be allowed to sell property unless doing ‘would be detrimental to the public.’”⁵¹ Missouri

⁴⁵ Ex. 200, Robertson Rebuttal, Schedule JJR-r2, p. 7 of 20.

⁴⁶ *Id.*

⁴⁷ Section 393.847, RSMo.

⁴⁸ *State ex rel. Missouri Public Defender Com’n v. Waters*, 370 S.W.3d 592, 598 (Mo. banc 2012).

⁴⁹ *Id.*

⁵⁰ *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

⁵¹ *Osage Utility Operating Co., Inc. v. Mo. Pub. Serv. Comm’n*, 637 S.W.3d 78, 93 (Mo. Ct. App. W.D. 2021), quoting *State ex rel. City of St. Louis v. Pub. Serv. Comm’n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934).

courts have explained that the purpose of Section 393.190.1 is “to ensure the continuation of adequate service to the public served by the utility.”⁵²

H. The Commission does not regulate OCWC, nor does it have jurisdiction over OCWC’s Board of Directors or the future rates set by that Board.⁵³

I. A utility’s rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.”⁵⁴

J. The Commission has supervisory powers over all water corporations, all sewer systems, and their operations within this state, and may impose conditions on Foxfire as Staff has recommended.⁵⁵

Decision

Foxfire and OCWC assert that the Commission should grant Foxfire’s application to sell substantially all its water and sewer assets to OCWC because it is in the public interest. In such a transaction, the touchstone consideration for the Commission is, whether the proposed transaction is “detrimental to the public.”

In approving the transfer of a regulated utility’s assets, the Commission must determine that the sale is “not detrimental to the public.”⁵⁶ The Commission must authorize the transfer of a regulated utility’s assets unless the transfer is shown to be

⁵² *Osage Utility Operating Co., Inc. v. Mo. Pub. Serv. Comm’n*, 637 S.W.3d 78, 92 (Mo. Ct. App. W.D. 2021), quoting *State ex rel. Fee Fee Trunk Sewer v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. W.D. 1980).

⁵³ See *Love 1979 Partners v. Public Service Comm’n of Missouri*, 715 S.W.2d 482 (Mo. 1986).

⁵⁴ *State ex rel. Missouri Office of the Public Counsel v. Public Service Com’n of State*, 293 S.W.3d 63 (Mo. App. 2009).

⁵⁵ Section 386.250, RSMo.

⁵⁶ See *State ex rel. City of St. Louis v. Public Service Comm’n of Missouri*, 335 Mo. 448, 457-60, 73 S.W.2d 393, 399- 400 (Mo. 1934).

detrimental to the public.⁵⁷ Although no exhaustive list has been announced of the considerations that may influence whether a sale is detrimental to the public, Missouri courts have held that the Commission is to consider all relevant factors in issuing its decisions and orders.⁵⁸

OPC argues that the contract price for Foxfire's utility assets incorporates an acquisition premium that will cause harm to Foxfire's customers under OCWC's ownership. Staff, Foxfire, and OCWC disagree, and presented evidence showing the details of the transaction and the likely impact the transaction will have on the rates for service and quality of service provided.

Purchase Price

OPC argues that any price above the rate base of the property includes an acquisition premium; in this case, \$1,195,548 plus applicable interest. OPC's position is that the acquisition premium is detrimental because it imposes a debt burden on customers that is not offset by a corresponding benefit; that even if OCWC could refrain from raising rates in the first year of ownership that it would only be a short delay before a near-inevitable rate increase.

OCWC argues that rate base is not an appropriate measure in determining a reasonable price. OCWC's evidence shows that the purchase price of Foxfire's assets is reasonable, and comparable to sales of other water and wastewater systems in Missouri and Illinois, showing that the per customer/connection price for the Foxfire assets is consistent with other sales in the region. In its argument, OPC ignored that the structure

⁵⁷ *Environmental Utilities, LLC v. Public Service Comm'n of Missouri*, 219 S.W.3d 256, 265 (Mo. App. W.D. 2007).

⁵⁸ *Osage Utility Operating Company v. Missouri Public Service Comm'n.*, 637 S.W.3d 78, 93 (Mo. App. W.D. 2021)

of the different entities and the nature of the transaction includes benefits that offset the acquisition premium debt. Where Foxfire's CCN authorizes a return on equity and a capital structure designed to produce a return for its owners, OCWC has no profits, and surplus from annual income stays in the company and goes to the operating budget or is kept as reserve for repair. No dividends are paid to its owners, and OCWC does not set rates to include a return on equity. Additionally, OCWC is run by a Board of Directors who are answerable to the customers that elect them. OCWC also operates other facilities and has other resources that may bolster its ability maintain or improve its facilities without placing an additional financial burden on the Foxfire customers.

OPC's argument fails to explain why the rate base is a reasonable price in a transaction for the purchase of an entity that does not require a profit or a return on investment to owners. Nor does it account for the benefits represented by not-for-profit ownership and the financial buffering benefits of OCWC's total scale of operations.

The evidence shows that the cost of operating the facility and servicing the debt created by the acquisition premium does not exceed revenues at the current rates. Even with the additional debt burden caused by the transaction premium, the facility can be operated through the loan period without additional rate increases and without outside resources. In addition to the current 258 billed locations, the Foxfire facility can support an additional 150 units without modification. By expanding its operations, OCWC may potentially increase its revenues by approximately 58% without the need for additional capital improvements, potentially reducing the debt load per customer.

The evidence does not support a finding that the debt associated with the acquisition premium would put upward pressure on rates for OCWC's customers. The

evidence shows OCWC customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits. The Commission is unconvinced by OPC's argument that the proposed sale at the contract price, including the acquisition premium debt, is detrimental to the public interest.

Arm's-Length Transaction

OPC also objects to the close affiliation and relationship between Helms, Casaletto, and OCWC, and the lack of any tangible negotiation in determining the sale price. OPC argues that an arm's-length agreement is not possible in this case due to the close relationship between Helms and OCWC, and the close relationship between Helms and the OCWC Board President David Casaletto. The record shows that Helms recused himself from OCWC's initial board meeting in which the acquisition of Foxfire was first discussed, and that he resigned from OCWC's Board of Directors several months before the vote to purchase Foxfire's assets. OPC suggests nefarious dealings between Helms and Casaletto, and points to the purchase price as somehow showing them to be unreliable. However, OPC did not present any evidence or argument that the contract price was excessive aside from its argument that it is above rate base. Additionally, OPC fails to identify any evidence of inappropriate interactions between Helms and the Board. The Commission is not convinced by OPC's claim that an arm's-length negotiation did not occur based on the circumstances.

Conditions

The conditions recommended by Staff are not conditions to the Agreement, but a list of tasks that Foxfire must comply with regarding their relationship with the Commission during the period of the transaction. Neither Foxfire nor OCWC object to these conditions,

and OPC has not commented. The Commission will grant Staff's request to include them in its order.

The Commission finds that the proposed transfer of assets is not detrimental to the public interest. The Commission will grant the application with the conditions Staff has recommended.

THE COMMISSION ORDERS THAT:

1. Foxfire's application to sell its water and sewer assets to OCWC is granted.
2. Foxfire is authorized to sell and transfer to OCWC the water and sewer utility assets located in Stone County described in the application.
3. Foxfire is authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.
4. Foxfire shall notify the Commission of closing on the water and sewer assets with the OCWC within five days of closing.
5. Foxfire shall cease providing service immediately after closing on the assets.
6. If closing on Foxfire's assets does not take place within thirty days following the effective date of the Commission's order, Foxfire shall file a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty-day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur.

7. If Foxfire determines that a transfer of the assets will not occur, Foxfire shall notify the Commission of such.
8. Foxfire's CCN and tariff are cancelled effective when Foxfire notifies the Commission that the water and sewer assets have been transferred to OCWC.
9. This order shall become effective on February 4, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of The City of)
Butler and Osage Valley Electric Cooperative for)
Approval of a First Territorial Agreement)
Designating the Boundaries of Exclusive Service)
Areas Within Portions of Bates County)

File No. EO-2023-0126

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipal owned utilities and rural electric cooperatives.

§6. Territorial agreements

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

§6. Territorial agreements

§11. Territorial agreements

An evidentiary hearing is required unless the territorial agreement is resolved between the parties; thus, the Commission found that it may make a determination without an evidentiary hearing.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

An evidentiary hearing is required unless the territorial agreement is resolved between the parties; thus, the Commission found that it may make a determination without an evidentiary hearing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of February, 2023.

In the Matter of the Application of The City of)
Butler and Osage Valley Electric Cooperative for)
Approval of a First Territorial Agreement)
Designating the Boundaries of Exclusive Service)
Areas Within Portions of Bates County)

File No. EO-2023-0126

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: February 1, 2023

Effective Date: March 3, 2023

On October 2, 2022,¹ the City of Butler (Butler) and Osage Valley Electric Cooperative (Osage Valley) (collectively, “Joint Applicants”) filed a *Joint Application* for approval of a territorial agreement to provide electric service in certain areas of Bates County, Missouri.

In the *Joint Application*, Joint Applicants asked for leave, pursuant to the territorial agreement, to allow Butler to provide electrical service to 28 parcels of land and to allow Osage Valley to provide electrical service to one parcel of land – all in Bates County, Missouri, outside the corporate boundaries of Butler. The territorial agreement does not require transfer of any facilities or customers between Joint Applicants. Accordingly, no changes of suppliers are requested in the *Joint Application*.

Attached to the territorial agreement were the following exhibits:

- Exhibit 1 – maps of the corporate boundaries of Butler, representing the current electrical service area of Butler;

¹ All date references are to 2022 unless otherwise indicated.

- Exhibit 2 – a list of addresses and property owners of the 28 parcels to be included in Butler’s electric service area pursuant to the territorial agreement;
- Exhibit 3 – property reports, maps, deeds, and other descriptors of the 28 parcels to be added to Butler’s electric service area, as referenced in Exhibit 2; and
- Exhibit 4 – a map of the exclusive service area of Osage Valley, excluding the property and territory referenced in Exhibit 1 (Butler’s corporate boundaries) and Exhibits 2 and 3 (the property and territory being added to Butler’s electric service area pursuant to the territorial agreement).

On October 7, the Commission issued an *Order Directing Notice, Setting Deadline for Intervention, and Directing Staff Recommendation*. The order directed the Commission’s Data Center to send a copy of the *Joint Application* in this case to applicants in 15 related change of electric supplier cases pending before the Commission.² The parcels for which a change of electric supplier have been requested in the 15 related cases are all located in the Evergreen Estates subdivision. Those parcels are located outside the city limits of Butler, but currently receive electric service from Butler. The applicants in those cases will be referred to as the “Evergreen Estates Applicants” throughout the remainder of this Report and Order.

No parties – whether it be the Evergreen Estates Applicants, or otherwise – requested intervention this case.

The Staff of the Commission (Staff) filed its *Staff Recommendation* on November 10. In it, Staff noted that the Evergreen Estates Applicants all signed a petition that was filed with each of their applications. The petition indicates that the signees wish to have their electric service switched to Osage Valley based on their understanding that

² File Nos. EO-2023-0039, EO-2023-0040, EO-2023-0041, EO-2023-0042, EO-2023-0043, EO-2023-0044, EO-2023-0045, EO-2023-0046, EO-2023-0047, EO-2023-0048, EO-2023-0049, EO-2023-0050, EO-2023-0051, EO-2023-0063, and EO-2023-0064.

the electric service provided by Butler is not legal, due to the location of the parcels outside of city limits and the lack of a territorial agreement designating Butler as the exclusive supplier of electrical service for the Evergreen Estates subdivision. The petition states that the situation prevents expansion of electrical service in the subdivision, preventing advancement of home construction and devaluing property in the subdivision. Staff concludes that a territorial agreement between Butler and Osage Valley covering the Evergreen Estates subdivision would address the question of Butler legally providing electric service to the subdivision.

The *Staff Recommendation* further notes that, in its response in the 15 related change of electric supplier cases, Osage Valley stated that, in order to provide electric service to the parcels in question, it would need to extend its current facilities at least 2,400 feet and conduct extensive tree-trimming at extreme cost. Alternative routes for Osage Valley to provide electric service to the Evergreen Estates subdivision would require crossing railroad property and an interstate highway – also a costly proposition.

Staff recommended that the Commission conclude that the *Joint Application* is not detrimental to the public interest and that the Commission approve the application and the accompanying territorial agreement. No party objected to the *Joint Application* or *Staff Recommendation*.

On November 30, Butler and Osage Valley filed a *Joint Motion for Leave to Amend Application and Amendment to the Application*. In the motion, Butler and Osage Valley requested leave to amend Exhibit 1 and Exhibit 4 to the territorial agreement filed with its *Joint Application* on October 5. Under the motion, Exhibit 1 – maps of the corporate boundaries of Butler, representing the current electrical service area of Butler – would be

amended to exclude a parcel inside the corporate boundaries of Butler that is currently served by Osage Valley and Exhibit 4 – a map of the exclusive service area of Osage Valley – would be amended to include that same parcel.

On December 8, the Office of Public Counsel filed *Public Counsel's Response to Amended Territorial Agreement* in which it stated that it did not oppose the amended territorial agreement, but requested that the 15 related change of electric supplier cases pending before the Commission be decided either before or contemporaneously with this territorial agreement case. The Commission is, in fact, issuing orders contemporaneously with this territorial agreement case that will resolve the 15 related change of electric supplier cases.

No other party filed a response to the *Joint Motion for Leave to Amend Application and Amendment to the Application*.

On December 20, the Commission issued its *Order Granting Leave to Amend Application* in this case. On the same date, in the 15 related change of electric supplier cases, the Commission issued an *Order Directing Responses* in which it referenced this territorial agreement case. The order directed the Evergreen Estates Applicants to respond to the order by January 13, 2023, stating whether each wished to proceed or dismiss their change of electric supplier application. None of the Evergreen Estates Applicants filed a response.

FINDINGS OF FACT

1. Osage Valley is a Chapter 394 rural electric cooperative, organized and existing under the laws of Missouri, with its headquarters at 1321 N. Orange Street, Butler, Missouri 64730. Osage Valley is engaged in the distribution of electric energy and service

to its members within certain Missouri counties. Osage Valley has no pending actions or final judgments or decisions against it from any state or federal agency or court that involve its customer service or rates within the three years immediately preceding the filing of the *Joint Application*. Osage Valley is not required to file annual reports or pay assessment fees.

2. Butler is a Missouri third class city existing under the laws of Missouri, with its principal office located at 22 W. Ohio, Butler, Missouri 64730. Butler is engaged in the business of providing electrical and water utility services to its citizens within its city limits. Butler has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or its rates within the three years immediately preceding the filing of the *Joint Application*. Butler is not required to file annual reports or pay assessment fees.

3. On October 2, Joint Applicants filed a *Joint Application* for approval of a territorial agreement to provide electric service in certain areas of Bates County, Missouri. The territorial agreement was included in the *Joint Application*.

4. Under Section 394.080.1(4), RSMo, Osage Valley is currently authorized to serve certain areas of Bates County, Missouri outside the corporate boundaries of Butler.

5. The Evergreen Estates Applicants were given notice of this case and none intervened.

6. The Evergreen Estates Applicants were directed by the Commission to file a response, stating whether each wished to proceed or dismiss their change of electric supplier application. None filed a response.

7. No party has requested an evidentiary hearing in this matter.

CONCLUSIONS OF LAW AND DECISION

Section 394.312.1, RSMo 2016, authorizes territorial agreements between rural electric cooperatives and municipally owned utilities. Per Section 394.312.2, “Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, [and] any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality. . . .” Before becoming effective, territorial agreements must receive Commission approval by report and order.³ The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing.⁴ The Commission may approve the application if it determines that approval of the territorial agreement, in total, is not detrimental to the public interest.⁵

No parties oppose approval of the proposed territorial agreement, and no person has sought intervention. No evidentiary hearing is required. Because (1) the proposed territorial agreement appears to resolve the 15 related change of electric supplier cases, (2) none of the Evergreen Estates Applicants have objected to it, and (3) Osage Valley would incur considerable cost were it to provide electric service to the Evergreen Estates subdivision, the Commission finds that the territorial agreement is not detrimental to the public interest. The Commission will approve the territorial agreement designating the boundaries of exclusive electric service areas within certain portions of Bates County, Missouri.

³ Section 394.312.4, RSMo 2016.

⁴ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

⁵ Section 394.312.5, RSMo.

THE COMMISSION ORDERS THAT:

1. The *Joint Application* for approval of a territorial agreement filed on October 2, 2022, as amended on November 30, 2022, is approved. The boundaries of exclusive electric service areas within certain portions of Bates County, Missouri shall be as described in those filings.
2. This order shall be effective on March 3, 2023.

**BY THE COMMISSION**

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The	)	
City of Butler and Osage Valley Electric	)	
Cooperative for Approval of a First	)	
Territorial Agreement Designating the	)	File No. _____
Boundaries of Exclusive Service Areas	)	
Within Portions of Bates County	)	

JOINT APPLICATION

COME NOW The City of Butler (City) and Osage Valley Electric Cooperative (Osage Valley) (collectively, Applicants), by and through their respective counsel, and for their Joint Application to the Missouri Public Service Commission (the "Commission"), pursuant to 4 CSR 240-2.060, 20 CSR 4240-3.130, and RSMo. §394.312 and §416.041, for an order approving Applicants' First Territorial Agreement (Agreement), respectfully state as follows:

The Applicants

1. City is a Missouri city of the 3rd Class organized and existing under the laws of Missouri with its principal office located at 22 W. Ohio, P.O. Box 420, Butler, Missouri 64730. City is engaged in the business of providing electrical and water utility services to the citizens of the City within city limits.

2. City has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates and that have occurred within the three years immediately preceding the filing of this Application. City has no overdue Commission annual reports or assessment fees.

3. Osage Valley is a rural electric cooperative organized and existing pursuant to Chapter 394, RSMo, with its headquarters located at 1321 N. Orange Street, Butler, Missouri 64730. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of

electric energy and service to its members within certain Missouri counties. Osage Valley has no pending or final judgments or decisions against it from any state or federal agency or court which involve its customer service or rates within the three years immediately preceding the filing of this Joint Application. A copy of a Certificate of Good Standing from the Office of the Missouri Secretary of State for Osage Valley was filed in Case No. EO-2021-0339 and is incorporated herein by reference.

Correspondence and Communication

4. Correspondence, communications, orders, and decisions in regard to this Application should be directed to:

Anthony Hernandez
Lauber Municipal Law, LLC
250 NE Tudor Road
Lee's Summit, Missouri 64086
Telephone: (816) 523-7881
Email: Ahernandez@laubermunicipal.com

Megan E. McCord, #62037
Friel, McCord & Smiley, LLC
P.O. Box 14287
Springfield, MO 65814
Telephone: 417-227-8405
Email: mmccord@reclawfirm.com

The Territorial Agreement

5. **The Service Areas.** Subject to the terms and conditions of the First Territorial Agreement between Osage Valley Electric Cooperative and the City of Butler (the "Agreement"), the Applicants have agreed to a boundary change affecting 29 parcels of land outside the City of Butler, as described in Paragraphs 1-4 and Exhibits 2, 3, and 5 of the First Territorial Agreement. Applicants have attached a copy of the Agreement to this Application as

Appendix A, which is incorporated by reference into this Application and made a part hereof for all purposes. As required by 20 CSR 4240-3.130(1)(A), 4 CSR 240-3.130(1)(A), maps and legal descriptions depicting the parcels affected by the First Territorial Agreement are a part of the Agreement and are incorporated by reference into this Application and made part hereof for all purposes. Each Applicant will continue to have service responsibilities beyond the boundaries of the Agreement unaffected by the terms of the Territorial Agreement.

The purpose of this First Territorial Agreement is to allow the City to continue to lawfully provide electrical service to 28 parcels of land outside the city limits of Butler, Missouri and to allow Osage Valley to serve a parcel of land located outside of the city limits regardless of any potential future annexations.

6. **No Changes of Suppliers.** The Agreement does not require transfer of any facilities or customers between the Applicants, so no list of structures and persons whose utility service would be changed by the Agreement, as required by 20 CSR 4240-3.130(1)(E), is included.

7. **Other Electric Suppliers.** To Applicants' knowledge and belief, there are no other electric suppliers serving in the areas covered by this Agreement.

8. **Public Interest.** The Agreement is not detrimental to the public interest and the proposed change in electric service area designation is in the public interest, because the Agreement prevents duplication of electric service facilities.

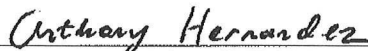
9. **Hearing.** The City and Osage Valley agree that, pursuant to Section 394.312(5) RSMo, there is no need to hold an evidentiary hearing on the Agreement.

WHEREFORE, Applicants respectfully request that the Commission issue its report and order: (a) finding that the designation of electric service areas is not detrimental to the public

interest and approving the Applicants' First Territorial Agreement; and (b) authorizing Applicants to perform in accordance with the terms and conditions of the Agreement.

Respectfully submitted,

ATTORNEYS FOR THE CITY:



Anthony Hernandez, # 69129
Lauber Municipal Law, LLC
250 NE Tudor Road
Lee's Summit, Missouri 64086
Telephone: (816) 525-7881
Email: Ahernandez@laubermunicipal.com

ATTORNEYS FOR OSAGE VALLEY
ELECTRIC COOPERATIVE:



Megan E. McCord #62037
Friel, McCord & Smiley, LLC
P.O. Box 14287
Springfield, MO 65814
Telephone: 417-227-8405
Email: mmccord@reclawfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on October 4, 2022, to the following:

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, Missouri 65102
staffcounservice@psc.mo.gov

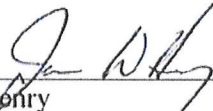


Megan E. McCord

VERIFICATION

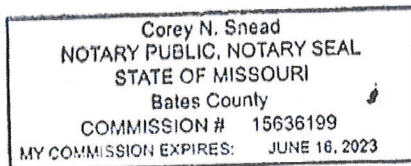
STATE OF MISSOURI)
) ss
COUNTY OF BATES)

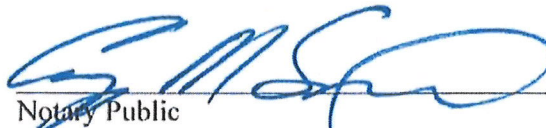
Being first duly sworn, Jim Henry states as follows: that he is the Mayor of the City of Butler and that he has read the foregoing application and the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief and that attorney Anthony Hernandez of Lauber Municipal Law, LLC is authorized by the City of Butler to make this filing and represent the City in this matter.



Jim Henry

Subscribed and sworn to before me this 9th day of September 2022.



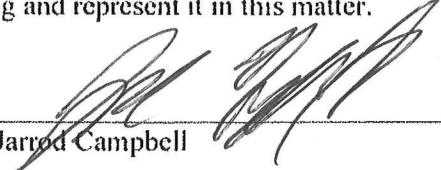


Notary Public

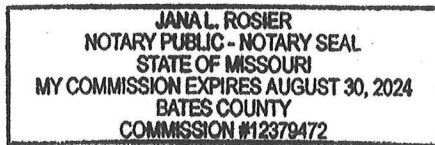
VERIFICATION

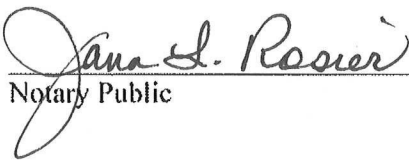
STATE OF MISSOURI)
) ss
COUNTY OF Bates)

Being first duly sworn, Jarrod Campbell states as follows: that he is the Manager of Osage Valley Electric Cooperative; that he has read the foregoing application; that the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief; and, that Megan E. McCord of Friel, McCord & Smiley, LLC is authorized by Osage Valley Electric Cooperative to make this filing and represent it in this matter.


Jarrod Campbell

Subscribed and sworn to before me this 27th day of September 2022.




Notary Public

TERRITORIAL AGREEMENT

THIS AGREEMENT is entered into by and between the City of Butler Missouri, hereinafter referred to as "City", and Osage Valley Electric Cooperative Association, hereinafter referred to as "Cooperative."

RECITALS

Whereas, City is a third-class city, duly formed pursuant to Chapter 77 of the Revised Missouri Statutes;

Whereas, City presently owns and operates a municipal electric power system, including certain electric distribution facilities (referred to as the "Facilities");

Whereas, Cooperative is a Missouri corporation, authorized by law to provide electric services within the State of Missouri, including all of Bates County;

Whereas, the City desires to provide retail electric services to certain customers outside of its corporate boundaries;

Whereas, Section 386.800 RSMo prohibits municipally owned electric utilities to provide electric energy at retail outside of its corporate boundaries unless certain statutorily defined exceptions apply.

Whereas, one of the listed exceptions to the prohibition defined in Section 386.800 RSMo is if such service is provided pursuant to an approved territorial agreement pursuant to Section 394.312 RSMo;

Whereas, Section 394.312 of the Revised Statutes of Missouri provides that competition to provide retail electric service as between rural electric cooperatives and municipally owned utilities may be displaced by written territorial agreements specifically designating the boundaries of the electric service area of each electric service supplier subject to said Agreement;

Whereas, the City and Cooperative desire to promote the orderly development of the retail electric service system within the City of Butler and the County of Bates, Missouri, to avoid wasteful duplication and to minimize disputes which may result in higher costs in serving the public;

AGREEMENT

Now Therefore, the City and Cooperative in consideration of the mutual covenants and agreements herein contained agree as follows:

1. The electric service area of the City for the purpose of this Agreement shall be all territory located within the City's corporate boundaries (described in Exhibit 1 to this Agreement by the map attached as Exhibit 1) and certain parcels located outside of the City's corporate boundaries (described in Exhibit 2 by list of addresses/parcel numbers and property owners and Exhibit 3, which shows property reports/legal descriptions; and maps). Exhibits 1, 2, and 3 are expressly incorporated herein by reference and made part of this Agreement as if fully verbatim.
2. The City shall provide electric service to all structures that it presently serves and to all new structures located within its electric service area (all territory described in Exhibits 1, 2, and 3) under this Agreement. Cooperative acknowledges and agrees that as between the parties, City shall have the sole and exclusive right to provide service to the structures the City presently

- serves and all new or additional structures located within the City's electric service area as described in Exhibits 1, 2, and 3.
3. The electric service area of Cooperative for the purposes of this Agreement is described in Exhibit 4 by the map attached (except that the property and territory described in Exhibits 1, 2, and 3 shall be excluded from the electric service area of the Cooperative), which is expressly incorporated herein by reference and made a part of this agreement as fully set out herein verbatim. The electric service area of the Cooperative shall NOT include the City's electric service area described in Exhibits 1, 2 and 3.
 4. Cooperative shall provide electric service to all structures that it presently serves, and to all new structures located within its electric service area under this Agreement. City acknowledges and agrees that as between the parties, Cooperative shall have the sole and exclusive right to provide service to the structures Cooperative presently serves and all new or additional structures built subsequent to this Agreement within Cooperative's electric service area as described in Exhibit 4. However, it is agreed and acknowledged by the parties that from time to time, the City may annex land located within the Cooperative's electric service area and that, excluding the territory described in Exhibit 5, such annexations will result in the decrease of the Cooperative's electric service area to the extent that the newly annexed land is unserved by the Cooperative. Notwithstanding the language of the previous sentence, it is agreed and acknowledged by the parties that Cooperative shall be the electric supplier to a parcel of land lying east of the City's corporate boundaries and described the property description and map shown in Exhibit 5. Even if the City annexes the territory described in Exhibit 5, Cooperative shall remain the electric supplier of this territory. Exhibit 5 is expressly incorporated herein by reference and made part of this Agreement as if fully verbatim.
 5. It is understood and acknowledged by the parties that from time to time, the City may annex land located within the Cooperative's electric service area as provided in this Agreement, and that such annexations may impact the Cooperative's electric service area. Specifically, lawful annexations by the City may potentially increase the City's electric service area and diminish the Cooperative's electric service area. However, the City's potential annexation of the territory described in Exhibit 5 and currently existing within Cooperative's electric service area shall not result in a change of electric suppliers within the territory described in Exhibit 5. Cooperative shall continue to be the electric supplier of the territory described in Exhibit 5 notwithstanding any annexation of it by the City.
 6. Excluding the territory described in Exhibit 5, it is understood and acknowledged by the parties that pursuant Section 386.800.2 of the Revised Missouri Statutes, the City may extend its electric service area within lawfully and newly annexed land by the City that exists within Cooperative's electric service area where Cooperative is, contemporaneous to the annexation, not providing permanent service to a structure.
 7. Notwithstanding the language found in Section 386.800(2) and excluding the territory described in Exhibit 5, it is understood and acknowledged by the parties that if the City annexes territory located within Cooperative's electric service area as defined by this Agreement, any new or additional structures completed within the annexed territory, subsequent to successful annexation, shall be served by the City.

8. If the City desires to extend its service territory to include any structure located within a newly annexed area which has received permanent service from the Cooperative within ninety (90) days prior to the effective date of annexation, the City shall, pursuant to Section 386.800.4 of the Revised Missouri Statutes as amended:
 - a. Notify by publication in a newspaper of general circulation of the record owner of said structure, and notify in writing the Cooperative and the Public Service Commission, within sixty (60) days after the effective date of the annexation, the City's desire to extend its service territory to include said structure; and
 - b. Within six (6) months after the effective date of the annexation, receive approval from the City's governing body to begin negotiations pursuant to Section 394.312 of the Revised Missouri Statutes with the Cooperative.

It is understood and acknowledged by the parties that shall meet and negotiate in good faith, the terms of a prospective territorial agreement. The parties shall have no more than one hundred and eighty (180) days from the date of receiving approval from the City's governing body within which to conclude their negotiations and file their territorial agreement with the Public Service Commission for approval pursuant to Section 394.312 of the Revised Missouri Statutes. This time period for negotiations may be extended for a period not to exceed one hundred and eighty (180) days by a mutual agreement of the parties and a written request with the Public Service Commission.

Notwithstanding, the language of this Section, the City's annexation of the territory described in Exhibit 5 shall not change the fact that Osage Valley is and shall continue to remain the electric supplier of the territory described in Exhibit 5.

9. It is understood and acknowledged by the parties that pursuant to Section 386.800.1(1) of the Revised Missouri Statutes, City currently serves certain structures ("Grandfathered Structures") built before July 11, 1991, and located in the Cooperative's electric service area. It is also understood and acknowledged by the parties that City has lawfully served these Grandfathered since before July 11, 1991. Moreover, it is understood and acknowledged by the parties that nothing in this Agreement shall be construed to prevent the City's continued lawful services of these Grandfathered Structures.
10. The City and Cooperative shall enter into separate agreements relating to service agreements and street lighting contracts, etc., as needed.
11. Cooperative gives permission and authority to City to continue to engage in retail electric service sales to areas outside of its corporate boundaries, described and shown in Exhibits 2 and 3.
12. In consideration for allowing the City to continue to engage in retail electric service sales to existing structures and new structures built subsequent to the execution of this agreement in the areas described and shown in Exhibits 2 and 3, the Parties agree and acknowledge that Cooperative shall be the electric supplier to a parcel of land lying east of the City's corporate boundaries and described the property description and map shown in Exhibit 5. Even if the City

annexes the territory described in Exhibit 5, Cooperative shall remain the electric supplier of this territory. Exhibit 5 is expressly incorporated herein by reference and made part of this Agreement as if fully verbatim.

13. The Parties agree that either party hereto may service its own facilities even if located within the service area of the other party hereto except when such service would result in the duplication of current services or other wasteful duplication of facilities. For service outside areas described in this Agreement, the parties will continue to operate without regard to this Agreement.

14. Neither the boundaries described in this Agreement nor any term of this Agreement may be modified, repealed, or changed except by writing mutually approved by the respective governing bodies of the parties and of the Missouri Public Service Commission.

15. The parties may agree on a case-by-case basis by an Addendum hereto to allow a structure to receive service from one party though the structure is located in the electric service area of another party. Such Addendum referred to shall be filed with the Missouri Public Service Commission.

Each Addendum shall be accompanied by a notarized statement indicating that the party in whose territory the structure will be located and the party who will serve the structure support the Addendum.

Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Public Service Commission and shall indicate the customer's consent to be served by the service provided contemplated by the Addendum.

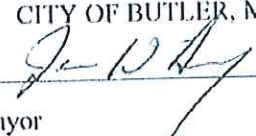
Each Addendum shall include, or be accompanied by, an explanation of the justification that electric service should be provided in the agreed manner.

16. The parties agree to undertake all actions reasonably necessary to implement this Agreement. The parties will share equally the cost of obtaining administrative approval of this Agreement. Each party will cooperate in presenting a joint application showing such Agreement to be in the public interest.

17. This agreement shall be binding upon the parties hereto and all subsidiaries, successors in interest, and assigns of the respective parties hereto.

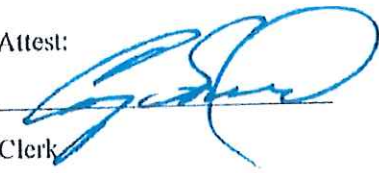
IN WITNESS WHEREOF, the parties have executed this Agreement this 9th day of September, 2022.

CITY OF BUTLER, MISSOURI

By: 

Mayor

Attest:



Clerk

OSAGE VALLEY ELECTRIC COOPERATIVE ASSOCIATION

By: 

President

Attest:

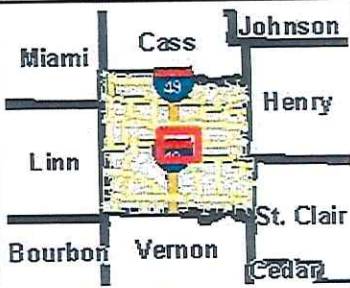


Secretary

EXHIBIT 1

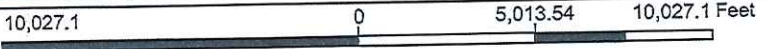
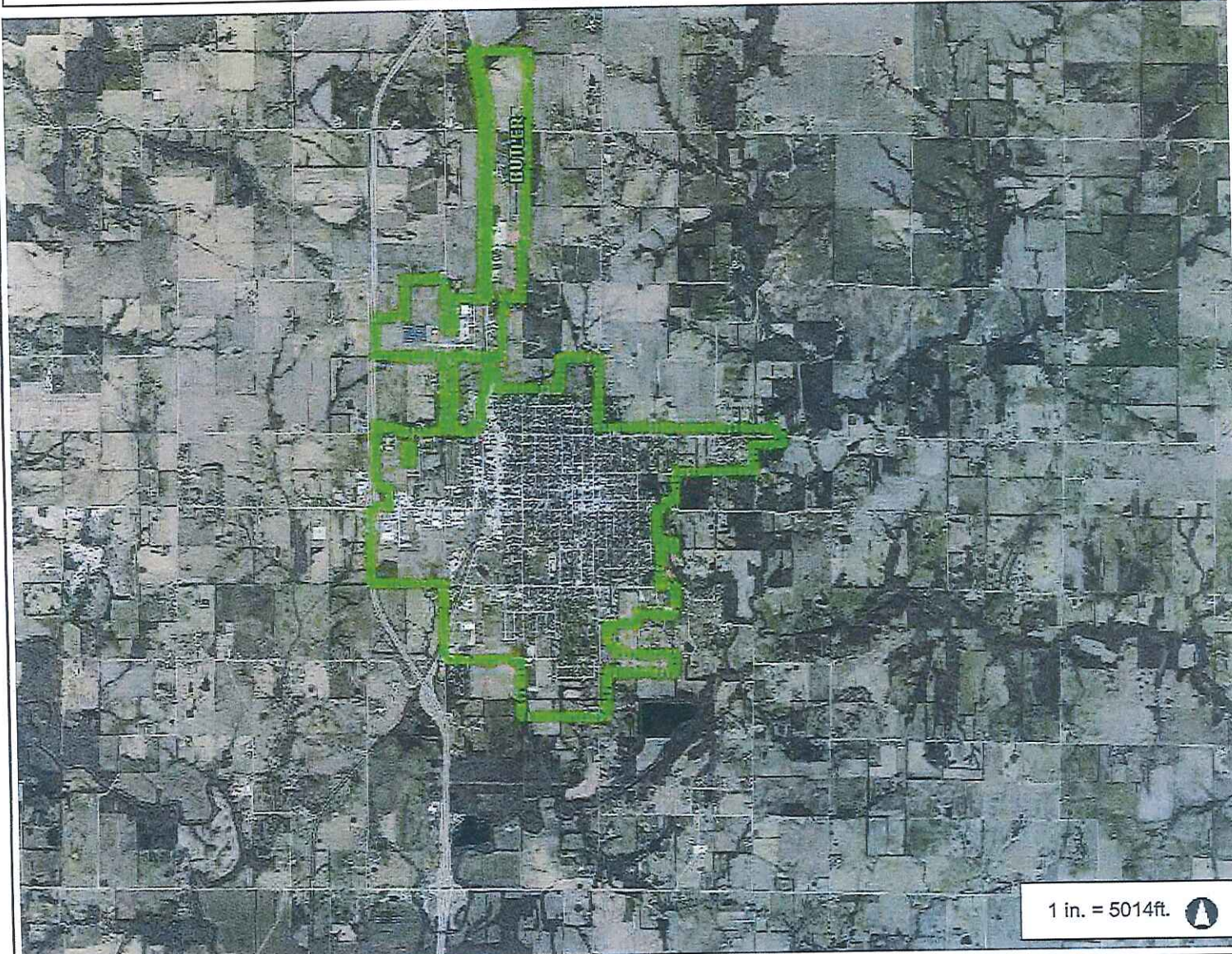
The following are maps of the corporate boundaries for the City of Butler, representing the current electrical service area of the City not including the properties to be added pursuant to this Territorial Agreement.

Bates County, MO



Legend
Corporate Limit Line

Notes



1 in. = 5014ft.

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

CITY OF BUTLER, MISSOURI
ZONING MAP

LEGEND

CITY LIMIT LINE	—
SECTION LINE	—
SECTION NUMBER	① ② ③ ④
ROAD & STREET NAME	—
RAILROAD R/W	—
RAILROAD WIDE	—
STATE HIGHWAY	⑦ ⑧
STREET ALIGNS	—
AGRICULTURAL A-1	
COMMERCIAL C-1	
COMMERCIAL C-2	
COMMERCIAL C-3	
INDUSTRIAL I-1	
INDUSTRIAL I-2	
RESIDENTIAL R-1	
RESIDENTIAL R-2	
RESIDENTIAL R-3	

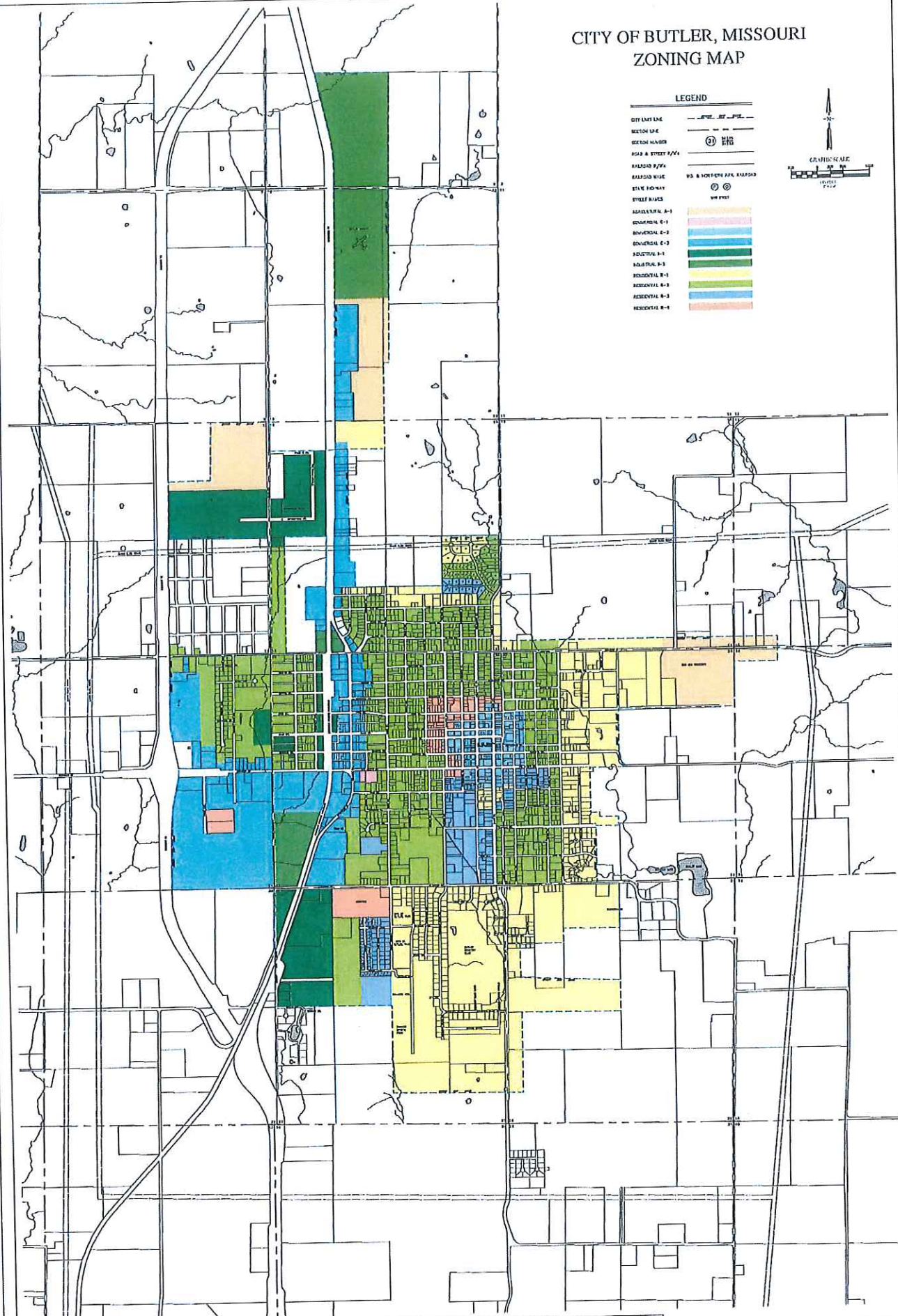
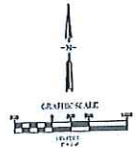


EXHIBIT 2

The following is a list of addresses and property owners of the properties to be included in City's electric service area pursuant to this Territory Agreement. These properties below are numbered, with corresponding numbers referenced in Exhibit 3 for the property reports, maps and legal descriptions for the below referenced properties:

1. Two adjacent properties owned by David and Kathy Crist
 - a. 1075 NE County Road 63, Butler, MO 64730 (Parcel ID # 1308027000000036000)
 - b. The unaddressed property (Parcel ID # 1308034000000002000)
2. 131 NE Kelly Drive, Butler, MO 64730 – Owned by Stacey & Janet Castrogiovanni
3. 1309 NE Kelly Drive, Butler, MO 64730 – Owned by Jon and Anna Schrock
4. 1329 NE Kelly Drive, Butler, MO 64730 – Owned by James D. Davis and Antionette Davis/Allen
5. 1066 NE County Road, Butler, MO 64730 – Owned by William Burch and Larry Burch.
6. 1405 S. Main Street, Butler, MO 64730 – Owned by Joni Duffield
7. A portion of the property located in an unaddressed parcel along East Pine Street (Parcel ID # 1306023000000015000) to be described in additional detail in **EXHIBIT 3** of this Agreement – Owned by Underwood, Richard & David & J.
 - a. Note: Only a portion of this parcel is to transfer to the City's electric service area. That portion is described in Exhibit 3 by a map highlighting in blue, the portion of the parcel to be included in the City's electric service area. That portion is described by survey. The remaining portion of this parcel shall remain in the Cooperative's electric service area.
8. Recreation Lake parcels (2 of them) both to be described in greater detail in **EXHIBIT 3** of this Agreement.
 - a. Parcel ID # 1307026000000002000 owned by Warren Kennedy
 - b. Parcel ID # 1306023000000012000 co-owned by Warren Kennedy and Judith Kennedy
9. A portion of the property located in an unaddressed parcel along Wells Street (Parcel ID # 1306023000000011000) to be described in additional detail in **EXHIBIT 3** of this Agreement – Owned by James & Donna Fritts
 - a. Note: Only a portion of this parcel is to transfer to the City's electric service area. That portion is described in Exhibit 3 by a map highlighting in blue, the portion of the parcel to be included in the City's electric service area. That portion is also described by survey. The remaining portion of this parcel shall remain in the Cooperative's electric service area.
10. An unaddressed Lot 15 of the Evergreen Estates Subdivision (Parcel ID # 1308027000000027010) – Owned by Chance and Shanya Hedrick.
11. An unaddressed Lot 2 of Evergreen Estates Subdivision (Parcel ID # 13080270000000230000) – Owned by Evelyn K Castrogiovanni
12. Two properties owned by Shane and Nicole McCoun:
 - a. The property commonly known as 71 NE. Cedar Drive, Butler, MO 64730;
 - b. The unaddressed Lot Evergreen Estates Subdivision (Parcel ID # 138027000000019000)
13. 1205 S. Main Street, Butler, MO 64730 – Owned by Casey and Rachel Heiman

14. An unaddressed property (Parcel ID # 1308027000000035000) – Owned by Scott Nameth, Aundreae Mason, and Tiffany Blaser.
15. 895 NE County Road 63, Butler, MO 64730 – Owned by William and Carrie Hobbs.
16. Two properties owned by Roger Farrell:
 - a. The property commonly known as 1492 NE Country Road 63, Butler, MO 64730
 - b. The unaddressed property (Parcel ID # 1308028000000016010)
17. An unaddressed property (Parcel ID 1308028000000017010) – Owned by MO Farm Loan LLC
18. 1399 NE Kelly Drive, Butler, MO 64730 – Owned by Mike and Beth Taranto
19. 2 Circle Drive, Butler, MO 64730 – Owned by Brent and Melody Mullins
20. 1359 NE Kelly Drive, Butler, MO 64730 – Owned by Wayne and Jenny Vermillion
21. 1461 NE Kelly Drive, Butler, MO 64730 – Owned by Shannon Barth
22. Two adjacent properties owned by James and Cathy Loomis
 - a. 70 NE Cedar Drive, Butler, MO 64730
 - b. The unaddressed property (Parcel ID #130802700000001000)
23. 3 Circle Drive, Butler, MO 64730 – Owned by Matt and Karen Cochran

EXHIBIT 3

The following are property reports, maps, deeds, and other descriptors of the properties to be added to the City's electric service area as referenced in Exhibit 2. Each property contains a property report, numbered to correspond with the numbered properties referenced in Exhibit 2.

1 A

Bates County, MO**Property Report Card****Parcel Number: 1308027000000036000**

Name: CRIST, DAVID R & KATHY A

Mail To Address: 1075 NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-9452

Situs Address: No Situs Address

Legal Description: S2 SW4 SW4 LYING E HWY 71 R/W

Deeded Acres: 18.00

Book: 0646

Page: 0176

Market Value: \$257,100.00

Ag Appraised: \$12,500.00

Residential Appraised: \$244,600.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$47,970.00

Ag Assessed: \$1,500.00

Residential Assessed: \$46,470.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 10-01-1993

Sales Price: \$0.00

Source:

Last Tax Bill: \$2,809.17

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1994

Base Area: 2486

Adjusted Area: 5604

Class:

Rooms: 007

Bedrooms: 003

Condition: 83

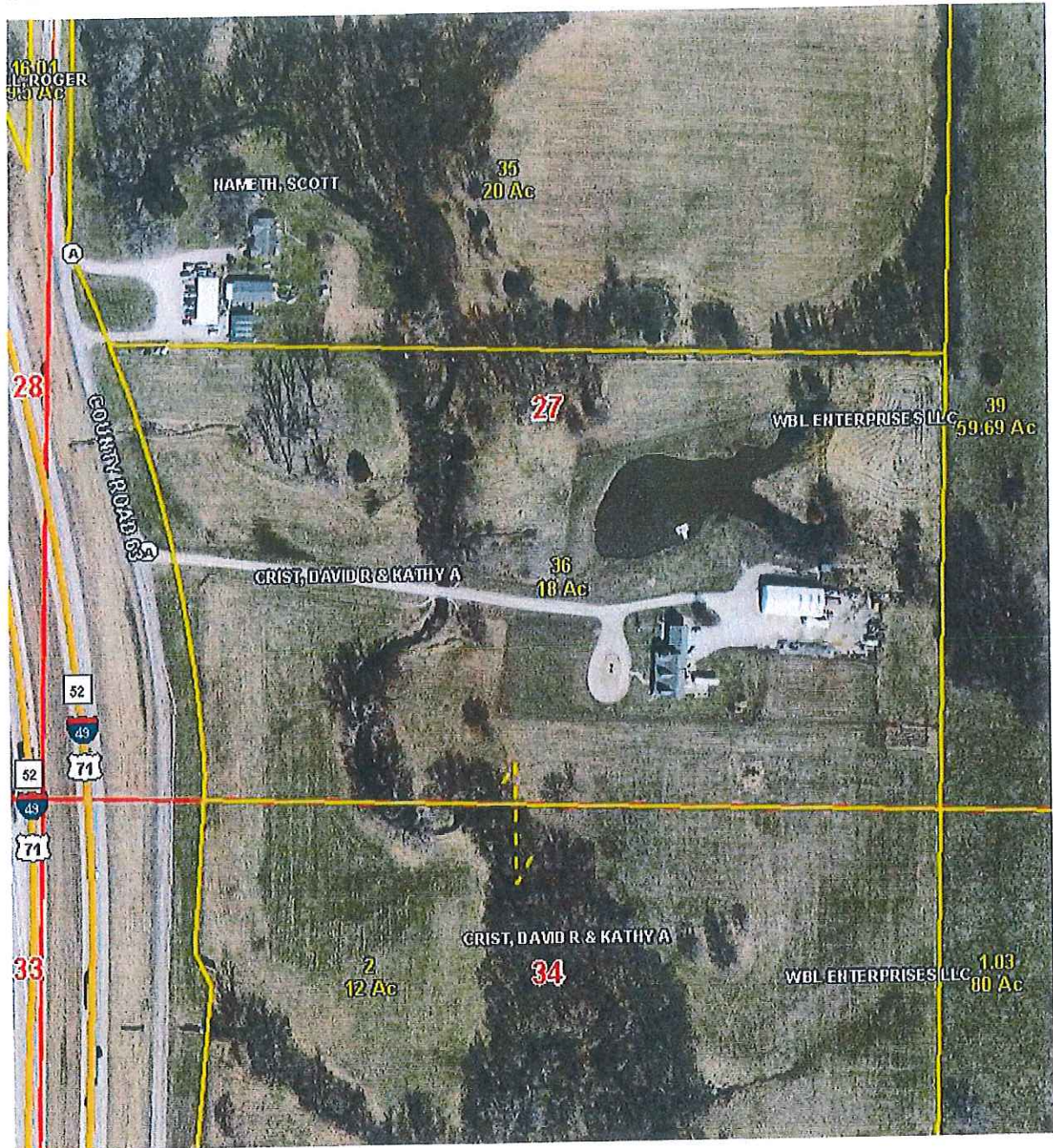
Improvement Value: \$236,900

AG Value: \$0

Residential Value: \$236,900

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000036000**

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WARRANTY DEED

THIS DEED, Made and entered into this 5th day of October A. D., One Thousand Nine Hundred and Ninety Three, by and between David Ray Crist and Kathy Ann Crist, party or parties of the first part, and his wife party or parties of the first part, and David Ray Crist and Kathy Ann Crist, husband and wife party or parties of the second part:

(Grantee's mailing address is:) 212 Vine, Butler, MO 64730

WITNESSETH, That the said party or parties of the First part, for and in consideration of the sum of ten dollars and other valuable considerations paid by the said party or parties of the Second part, the receipt of which is hereby acknowledged, does or do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said party or parties of the Second Part, the following described real estate situated in the County of Bates, in the State of Missouri to-wit:

All that part of the South Half of the Southwest Quarter of the Southwest Quarter of Section 27 and all that part of the North 15 acres of the Northwest Quarter of the Northwest Quarter of Section 34 lying East of the Easterly right of way line of the Service Road as described in Report of Commissioners, dated June 25, 1969 and recorded in the Recorder's Office of Bates County, Missouri, in Book 451 at Page 171, all of the above land being in Township 40 of Range 31.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said party or parties of the Second part, and to their heirs and assigns, forever; the said party or parties of the first part hereby covenanting that said premises are free and clear of any incumbrances and that said party or parties and the heirs, executors, and administrators of such party or parties shall and will warrant and defend the title to the premises, unto the said party or parties of the second part, and to their heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party or parties of the First Part has or have hereunto set their hand or hands the day and year first above written

x David Ray Crist x Kathy Ann Crist
David Ray Crist Kathy Ann Crist

STATE OF MISSOURI, ss. On this 5th day of October, 19 93
County of BATES
before me personally appeared David Ray Crist, his wife
Kathy Ann Crist, the person or persons described in and who executed the foregoing Instrument, and acknowledge that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Butler, MO the day and year first above written.
My term expires April 11, 19 96.
Mary Lucille Munday Notary Public
Mary Lucille Munday

STATE OF MISSOURI, ss. On this _____ day of _____, 19 _____
County of _____
before me personally appeared _____

to me known to be the person or persons described in and who executed the foregoing Instrument, and acknowledged that they executed the same as _____ free act and deed and the said _____ further declared _____ to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in _____ the day and year first above written.
My term expires _____, 19 _____

(SEAL) _____ Notary Public

STATE OF MISSOURI, ss. IN THE RECORDER'S OFFICE
County of Bates
I, Recorder of said county, do hereby certify that the within Instrument of writing was, at 1 o'clock 30 minutes PM, on the 5th day of October, A.D., 19 93, duly filed for record in this office, and has been recorded in Book 646, page 176.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Butler, Missouri, on the day and year aforesaid.
R. E. Lauer Recorder of Deeds.
By _____ Deputy.

Book 646 Page 176

18

Bates County, MO**Property Report Card****Parcel Number: 1308034000000002000**

Name: CRIST, DAVID R & KATHY A

Mail To Address: 1075 NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-9452

Situs Address: No Situs Address

Legal Description: N 15 AC NW4 NW4 (EXC RD R/W) ^

Decded Acres: 12.00

Book: 0646

Page: 0176

Market Value: \$2,200.00

Ag Appraised: \$2,200.00

Residential Appraised: \$0.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$260.00

Ag Assessed: \$260.00

Residential Assessed: \$0.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 10-01-1993

Sales Price: \$0.00

Source:

Last Tax Bill: \$15.22

Last Tax Bill Paided: N

Improvement Info

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Bates County, MO**Property Report Card****Parcel Number: 1308034000000002000**

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WARRANTY DEED

THIS DEED, Made and entered into this 5th day of October A. D., One Thousand Nine Hundred and Ninety Three, by and between David Ray Crist and Kathy Ann Crist, party or parties of the first part, and his wife, party or parties of the second part: David Ray Crist and Kathy Ann Crist, husband and wife

(Grantee's mailing address is:) 212 Vine, Butler, MO 64730

WITNESSETH, That the said party or parties of the First part, for and in consideration of the sum of ten dollars and other valuable considerations paid by the said party or parties of the Second part, the receipt of which is hereby acknowledged, does or do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said party or parties of the Second Part, the following described real estate situated in the County of Bates in the State of Missouri to-wit:

All that part of the South Half of the Southwest Quarter of the Southwest Quarter of Section 27 and all that part of the North 15 acres of the Northwest Quarter of the Northwest Quarter of Section 34 lying East of the Easterly right of way line of the Service Road as described in Report of Commissioners, dated June 25, 1969 and recorded in the Recorder's Office of Bates County, Missouri, in Book 451 at Page 171, all of the above land being in Township 40 of Range 31.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said party or parties of the Second part, and to their heirs and assigns, forever; the said party or parties of the first part hereby covenanting that said premises are free and clear of any incumbrances and that said party or parties and the heirs, executors, and administrators of such party or parties shall and will warrant and defend the title to the premises, unto the said party or parties of the second part, and to their heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party or parties of the First Part has or have hereunto set their hand or hands the day and year first above written

X David Ray Crist X Kathy Ann Crist
David Ray Crist Kathy Ann Crist

STATE OF MISSOURI, ss. On this 5th day of October, 19 93
County of BATES

before me personally appeared David Ray Crist, his wife Kathy Ann Crist, who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Butler, MO the day and year first above written, My term expires April 11, 19 96.

Mary Lucille Munday Notary Public
Mary Lucille Munday

STATE OF MISSOURI, ss. On this _____ day of _____, 19____
County of _____

before me personally appeared _____, further declared to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed and the said _____ to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in _____ the day and year first above written, My term expires _____, 19____

(SEAL)

Notary Public

STATE OF MISSOURI, ss. IN THE RECORDER'S OFFICE
County of Bates
I, Recorder of said county, do hereby certify that the within instrument of writing was, at 1:30 o'clock 30 minutes PM, on the 5th day of October, A.D., 19 93, duly filed for record in this office, and has been recorded in Book 646 page 176.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Butler Missouri, on the day and year aforesaid.

R. E. Lewis Recorder of Deeds.
By _____ Deputy.

Book 646

Page 176

ESCO

2

**Bates County, MO
Property Report Card****Parcel Number: 1308027000000022000**

Name: CASTROGIOVANNI, STACEY & JANET

Mail To Address: 131 KELLY DR

Mail To City State Zip: BUTLER MO 64730-2412

Situs Address: No Situs Address

Legal Description: LOT 1 EVERGREEN ADD, BUTLER^AND PART OF LOT 5^

Deeded Acres: 0.00

Book: 1028

Page: 0126

Market Value: \$158,700.00

Ag Appraised: \$0.00

Residential Appraised: \$158,700.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$30,150.00

Ag Assessed: \$0.00

Residential Assessed: \$30,150.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: DUGAN, BRENDA ANN TRUST

Date Acquired: 06-05-2018

Sales Price:

Source: O

Last Tax Bill: \$1,765.63

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Year Built: 1994

Base Area: 2175

Adjusted Area: 3436

Class: H/D+

Rooms: 5ýý

Bedrooms: 3ýý

Condition: 81

Improvement Value: \$145,630

AG Value: \$0

Residential Value: \$145,630

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000022000**

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FILE RECORD

ENTERED BOOK NO. 1028 PAGE 126
 COMPARED INDEX 1

MCNABB, PURSLEY & PORTER
 1 N MAIN
 BUTLER, MO 64730



STATE OF MISSOURI, BATES COUNTY, SS
 LUCILLE MUNDEY, RECORDER OF DEEDS

Book: 1028 Page: 126

Receipt #: 101303
 Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 6/5/2018 10:35:00 AM

²
 2-7 7 22493
 '102

TRUSTEE'S DEED

THIS DEED, made this 4th day of June, 2018, by and between BRENDA ANN DUGAN, Trustee of the Brenda Ann Dugan Revocable Trust Dated April 18, 2012, Grantor, and STACEY CASTROGIOVANNI and JANET CASTROGIOVANNI, husband and wife, Grantees. Grantees' mailing address is 4320 NE County Road 9503, Butler, Missouri 64730.

RECITALS

A. The Property (as defined below) was previously conveyed to BRENDA ANN DUGAN, Trustee of the Brenda Ann Dugan Revocable Trust Dated April 18, 2012, by deed filed in the Office of the Bates County Recorder of Deeds; and

B. Grantor is the duly appointed, qualified and acting Trustee under the "Brenda Ann Dugan Revocable Trust Dated April 18, 2012", executed by BRENDA ANN DUGAN as Settlor and as the initial Trustee; and

C. That under the powers and provisions of said Trust, the said Trustee has the power to sell and convey any real property which has been transferred into the Trust;

D. The Trust is in full force and effect and has not been revoked, amended as to the powers of trustees, or terminated.

CONVEYANCE

WITNESSETH: That the said Grantor, for and in consideration of the sum of Ten Dollars and other valuable considerations paid by the said Grantees, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees, the following described real estate, to-wit:

All of Lot 1 in Evergreen Subdivision to Bates County, Missouri, as shown by Plat in Plat Book 4, Page 11, Bates County, Missouri.

ALSO That part of the Northwest Quarter of the Southwest Quarter of Section 27, Township 40 North, Range 31 West of the 5th Principal Meridian in Bates County, Missouri, described as follows: Commencing at the Northeast corner of Lot 1 in Evergreen, a subdivision in Bates County, Missouri, for the point of beginning of the land to be described; thence on a plat bearing of North 83 degrees 56 minutes 00 seconds East a distance of 75.00 feet; thence South 06 degrees 25 minutes 00 seconds East a distance of 125.00 feet; thence South 50 degrees 08 minutes 06 seconds West a distance of 89.88 feet to the Southeast corner of said Lot 1; thence North 06 degrees 25

minutes 00 seconds West a distance of 175.00 feet to the point of beginning. Subject to easements, reservations, restrictions and condition of record, if any.

TO HAVE AND TO HOLD the same, together with all of the rights, immunities, privileges, and appurtenances to the same belonging to the said Grantees, and to their heirs and assigns, forever; the said Grantor hereby covenanting that said premises are free and clear of any incumbrances and that said party and the trustees, successors and assigns of such party shall and will warrant and defend the title to the premises, unto the said Grantees, and to their heirs and assigns forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand the day and year first above written.

Brenda Ann Dugan
BRENDA ANN DUGAN

STATE OF MISSOURI)
) ss.
COUNTY OF BATES)

On this 4th day of June, 2018, before me personally appeared BRENDA ANN DUGAN, Trustee of the Brenda Ann Dugan Revocable Trust Dated April 18, 2012, to me known to be the person who executed the foregoing Trustee's Deed in behalf of the said trust and acknowledged to me that she executed the same as her free act and deed for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Butler, Missouri, the day and year first above written.



Notary Public

NICOLAS B PORTER
Notary Public ~ Notary Seal
STATE OF MISSOURI
Bates County
My Commission Expires December 16, 2018
Commission #14632110

C:\closings\Dugan to Castrogiovanni\trustees deed.wpd

Book: 1028 Page: 126
Page #: 2

3

Bates County, MO**Property Report Card****Parcel Number: 1308027000000034000**

Name: SCHROCK, JON B & ANNA M

Mail To Address: 1309 NE KELLY DR

Mail To City State Zip: BUTLER MO 64730-4531

Situs Address: No Situs Address

Legal Description: EVERGREEN ADD LT 12

^AND THAT PART OF SW4 SEC 27 C

Deeded Acres: 0.00

Book: 0883

Page: 0044

Market Value: \$204,900.00

Ag Appraised: \$0.00

Residential Appraised: \$204,900.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$38,930.00

Ag Assessed: \$0.00

Residential Assessed: \$38,930.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: LENEVE, JUDITH A TRUST

Date Acquired: 08-06-2007

Sales Price:

Source: O

Last Tax Bill: \$2,279.78

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Improvement Value: \$194,950

Year Built: 1994

AG Value: \$0

Base Area: 2010

Residential Value: \$194,950

Adjusted Area: 4672

Commercial Value: \$0

Class: H/D+

Rooms: 000

Bedrooms: 000

Condition: 83

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Bates County, MO Property Report Card

Parcel Number: 1308027000000034000

Name: SCHROCK, JON B & ANNA M

Situs Address: No Situs Address

Deeded Acres: 0.00



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FILE RECORD
ENTERED BOOK NO. 883 PAGE 44
COMPARED _____ INDEX CI

CAT

2
27

STATE OF MISSOURI } ss IN THE RECORDERS OFFICE
County of Bates

Lucille Munday, Recorder of said county, does hereby certify that the within instrument of writing was on the 6 day of August A.D. 2007, duly filed for record in this office at 10 o'clock 15 minutes A M and is recorded in the records of this office in Book 883 on Page 44.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at office in Butler, Missouri this 6 day of August A.D. 2007
By Lucille Munday Recorder
Carol Higgins Deputy.

TRUSTEE'S SPECIAL WARRANTY DEED

THIS DEED, made and entered into this 3rd day of August, 2007, by and between JUDITH A. LENEVE, TRUSTEE OF THE JUDITH A. LENEVE INTER VIVOS TRUST AGREEMENT dated March 31, 1993, of Butler, Bates County, Missouri, and JON BRIAN SCHROCK and ANNA M. SCHROCK, husband and wife, whose mailing address is 104 Kelly Dr., Butler, Missouri 64730.

WHEREAS, Grantor is duly appointed, qualified, and acting trustee under trust instrument dated March 31, 1993; and

WHEREAS, said Trust Instrument remains in full force and effect and has not been amended or revoked; and

WHEREAS, the Trust Instrument gives Grantor a general power of sale of the below described real estate;

Now, Therefore, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged,

Grantor does hereby Bargain and Sell, Convey and Confirm, to Grantees, and Grantees' heirs and assigns, the following described real property in Bates County, Missouri:

All of Lot Twelve (12) in Evergreen Subdivision to Bates County, Missouri, as shown by Plat in Plat Book 4, Page 11, Bates County, Recorder's Office.

TO HAVE AND TO HOLD the same, together with all the rights, immunities, privileges and appurtenances unto Grantees and Grantees' heirs and assigns, forever;

And the Grantor, as Trustee only, and not as an individual, with all liability under this deed with respect to covenants or warranties expressly limited to assets of the trust estate, hereby covenants that Grantor, and successor trustee under the Trust Instrument, will warrant and defend the title to these premises unto the Grantees, and Grantees' heirs and assigns, forever, against the lawful claims of all persons claiming under Grantor.

BOOK 883

PAGE 44

1d

4

Bates County, MO**Property Report Card****Parcel Number: 1308027000000033000****Name: DAVIS, JAMES DALE & ANTIONETTE****Mail To Address: 1329 NE KELLY DR****Mail To City State Zip: BUTLER MO 64730-4531****Situs Address: No Situs Address****Legal Description: LOT 9 EVERGREEN ADDN^****Deeded Acres: 0.00****Book: 0712****Page: 0335****Market Value: \$153,900.00****Ag Appraised: \$0.00****Residential Appraised: \$153,900.00****Commercial Appraised: \$0.00****FCROP Appraised: \$0.00****Total Assessed: \$29,240.00****Ag Assessed: \$0.00****Residential Assessed: \$29,240.00****Commercial Assessed: \$0.00****FCROP Assessed: \$0.00****Previous Owner: MO FARM LOAN****Date Acquired: 03-04-1999****Sales Price:****Source: O****Last Tax Bill: \$1,712.32****Last Tax Bill Paid: N****Improvement Info****Structure: Residential****Year Built: 2000****Base Area: 1160****Adjusted Area: 3238****Class: H/D+****Rooms: 000****Bedrooms: 000****Condition: 83****Improvement Value: \$146,520****AG Value: \$0****Residential Value: \$146,520****Commercial Value: \$0**

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**Bates County, MO
Property Report Card****Parcel Number: 1308027000000033000**

Name: DAVIS, JAMES DALE & ANTIONETTE

Situs Address: No Situs Address

Deeded Acres: 0.00



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FORM NO. 4 CLARK COUNTY, MO.

APPROVED BY COUNSEL

CLARK COUNTY, MO.

Corporation Warranty Deed

This Indenture, Made on the 4th, day of March A. D. One Thousand Nine Hundred and Ninety-Nine, by and between

Missouri Farm Loan Company,

a corporation duly organized under the laws of the State of Missouri, of the County of Bates, State of Missouri, party of the first part, and

James Dale Davis and Antionette R. Davis, his wife,

of the County of Bates, State of Missouri, parties of the second part, (Mailing address of said first named grantee is 206 West Adams Street Butler, Missouri 64730).

WITNESSETH: THAT SAID PARTY OF THE FIRST PART, in consideration of the sum of Ten Dollars and other valuable considerations, DOLLARS,

to it in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, does by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Bates and State of

Missouri to-wit: All of Lot 9 of Evergreen Estates, a Subdivision of Bates County, Missouri, as shown in Bates County Recorder of Deeds in Plat Book 4 at Page 11.

Subject to all easements, reservations, declarations, covenants, agreements, rights-of-ways, liens and encumbrances of record or now located on said property.

Attached to and made a part of this Corporation Warranty Deed is a Survey as done by William C. Lethcho, Surveyor, dated July 11th, 1998, being Survey #2430.

TO HAVE AND TO HOLD, The premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said parties of the second part and unto their heirs and assigns forever, the said

Missouri Farm Loan Company,

hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that it has good right to convey the same; that the said premises are free and clear from any incumbrance done or suffered by it or those under whom it claims; and that

Missouri Farm Loan Company,

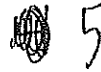
will warrant and defend the title of the said premises unto the said parties of the second part and unto their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, The said party of the first part has caused these presents to be signed by its President and attested by its Secretary, and the corporate seal to be hereto attached, the day and year first above written.

(SEAL)

Randy M. Pitts, Secretary.

**Missouri Farm Loan Company
By: Romulus M. Pitts, President.**

**Bates County, MO****Property Report Card****Parcel Number: 1308027000000039020**

Name: BURCH, WILLIAM

Mail To Address: 1066 NE COUNTY RD 1003

Mail To City State Zip: BUTLER MO 64730

Situs Address: ~

Legal Description: PT OF S2 SE SE BGN AT NE COR S2 SE SE TH S 327' W 330' TO POB TH N 180.75' W 36

Deeded Acres: 2.96

Book: 1043

Page: 0569

Market Value: \$12,400.00

Ag Appraised: \$0.00

Residential Appraised: \$12,400.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$2,360.00

Ag Assessed: \$0.00

Residential Assessed: \$2,360.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 09-11-2020

Sales Price:

Source: O

Last Tax Bill: \$138.20

Last Tax Bill Paid: N

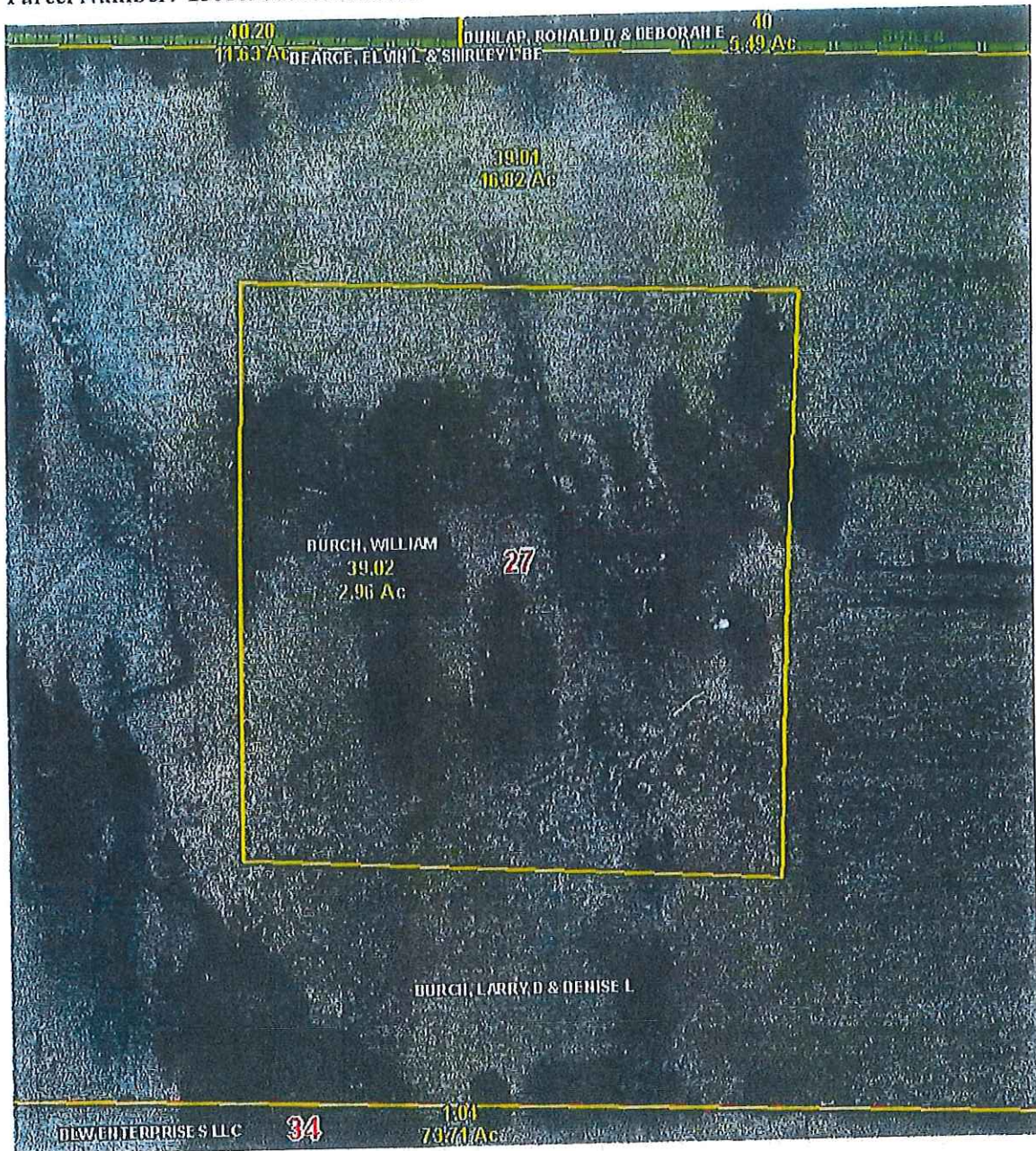
Improvement Info

Data contained within this web site was created from record research provided by the county and/or city. Bates County, Missouri does not guarantee any accuracies to the data or attribute information displayed, queried, or printed from this web site. This web site is only intended for informational purposes.

Bates County, MO

Property Report Card

Parcel Number: 1308027000000039020



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Recorded in Bates County, Missouri

Recording Date/Time: 09/11/2020 at 09:34:40 AM

Book: 1043 Page: 569

Instr #: 202002020

Pages: 2
Fee: \$27.00 S

Electronically Recorded

Danyelle Baker
Recorder of Deeds

WARRANTY DEED

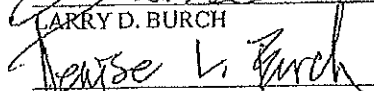
THIS DEED, made and entered into this 28th day of August, 2020, by and between LARRY D. BURCH and DENISE L. BURCH, husband and wife, Grantors, and WILLIAM BURCH, Grantee. Grantee's mailing address is 1066 NE County Road 1003, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantee, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantee the following described real estate, to-wit:

That part of the South Half of the Southeast Quarter of the Southeast Quarter of Section 27, Township 40 North, Range 31 West of the 5th Principal Meridian in Bates County, Missouri, described as follows: Beginning at the Northeast corner of the South Half of the Southeast Quarter of the Southeast Quarter of said Section 27, thence South along the East line of said Section 27 a distance of 327.00 feet, thence North 90 degrees 00 minutes 00 seconds West a distance of 330.00 feet to the point of beginning of the land to be described; thence North 00 degrees 00 minutes 00 seconds East a distance of 180.75 feet, thence South 90 degrees 00 minutes 00 seconds West a distance of 361.50 feet, thence South 00 degrees 00 minutes 00 seconds West a distance of 361.50 feet, thence North 90 degrees 00 minutes 00 seconds East a distance of 361.50 feet, thence North 00 degrees 00 minutes 00 seconds East a distance of 180.75 feet to the point of beginning. Subject to all easements of record.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantee and to his heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantee, and to the heirs and assigns of such party forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.


LARRY D. BURCH

DENISE L. BURCH

SURVEY DESCRIPTION AT THE REQUEST OF:

WILL BURCH

1066 NE COUNTY ROAD 1003

BUTLER, MO 64730

SURVEY DESCRIPTION

THAT PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN IN BATES COUNTY, MISSOURI; DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 27 A DISTANCE OF 327.00 FEET, THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 330.00 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 180.75 FEET, THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 361.50 FEET, THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 361.50 FEET, THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 361.50 FEET, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 180.75 FEET TO THE POINT OF BEGINNING, CONTAINING 3.00 ACRES MORE OR LESS AND SUBJECT TO ALL EASEMENTS OF RECORD.

INGRESS/EGRESS DESCRIPTION

15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; THAT PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN IN BATES COUNTY, MISSOURI; DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27, THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 27 A DISTANCE OF 327.00 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE OF THE EASEMENT TO BE DESCRIBED; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 330.00 FEET TO A POINT IN THE EAST LINE OF THE ABOVE DESCRIBED TRACT.

6

Bates County, MO**Property Report Card****Parcel Number: 1307026000000012000**

Name: DUFFIELD, JONI BD

Mail To Address: 1405 S MAIN ST

Mail To City State Zip: BUTLER MO 64730-2423

Situation Address: No Situation Address

Legal Description: SW4 SW4 (EXC W 330' N2 SW4 SW4) (EXC RD R/W) ^

Deeded Acres: 35.00

Book: 0973

Page: 0163

Market Value: \$91,900.00

Ag Appraised: \$25,600.00

Residential Appraised: \$66,300.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$15,670.00

Ag Assessed: \$3,070.00

Residential Assessed: \$12,600.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: DUFFIELD, BRIAN & JONI

Date Acquired: 01-24-2014

Sales Price:

Source: O

Last Tax Bill: \$917.66

Last Tax Bill Paid: N

Improvement Info

Structure: Barn

Year Built: 1920

Base Area: 480

Adjusted Area: 761

Class: B-51

Rooms: 000

Bedrooms: 000

Condition: 9

Improvement Value: \$640

AG Value: \$640

Residential Value: \$0

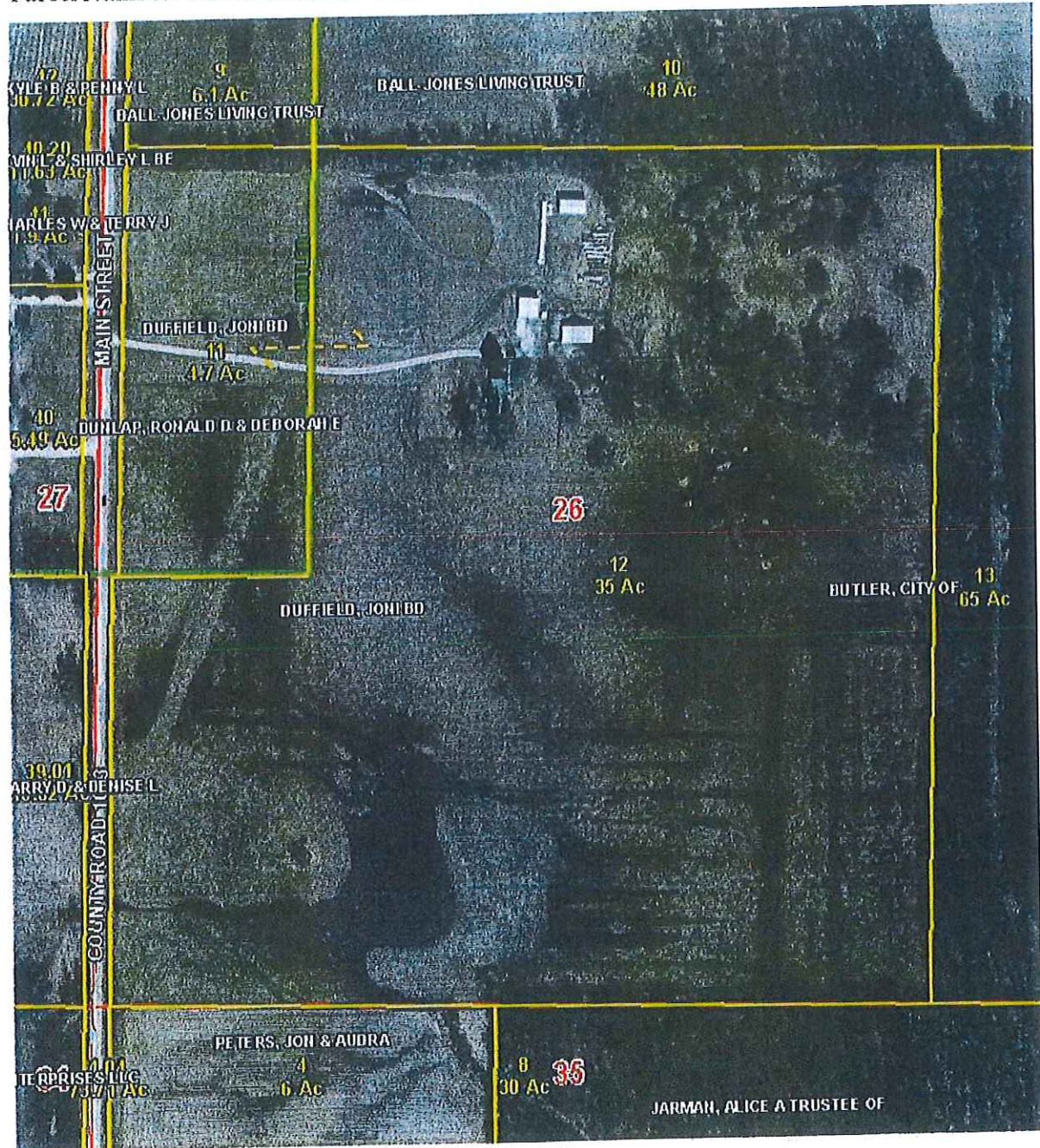
Commercial Value: \$0

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Bates County, MO

Property Report Card

Parcel Number: 1307026000000012000



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FILE RECORD

ENTERED BOOK NO. 973 PAGE 163
COMPARED _____ INDEX J/LMCNABB, PURSLEY & ASSOCIATES
1 NORTH MAIN
BUTLER, MO 64730STATE OF MISSOURI, BATES COUNTY, SS
LUCILLE MUNDEY, RECORDER OF DEEDS

Book: 973 Page: 163

Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 1/24/2014 1:35:00 PM

*Lucille Munday**CME
2
21*

BENEFICIARY DEED

THIS DEED, made and entered into this 24th day of January, 2014, by and between JONI TONYA DUFFIELD, a single person, Grantor, and BAILEY MICHELLE DUFFIELD and CORBIN J. DUFFIELD, Beneficiaries/Grantees. Grantees' mailing address is 1405 South Main, Butler, Missouri 64730. Return deed to Grantor at: 1405 South Main, Butler, Missouri 64730.

WITNESSETH: That the said Grantor for and in consideration of love and affection does by these presents grant, assign, convey and confirm unto beneficiaries, to be transferred on death of Grantor to beneficiaries, BAILEY MICHELLE DUFFIELD and CORBIN J. DUFFIELD, or to their lineal descendants per stirpes, the following described real estate, to-wit:

The Southwest Quarter of the Southwest Quarter of Section 26, Township 40, Range 31, Bates County, Missouri.

TO HAVE AND TO HOLD THE SAME, together with all the rights, immunities, privileges and appurtenances, to the same belonging unto Grantor, and upon the death of Grantor to the beneficiaries, their heirs and assigns forever.

This is a Beneficiary Deed executed pursuant to Section 461.025 Revised Statutes of Missouri, and shall not take effect until the death of Grantor. During the life of Grantor this deed shall be fully revocable and may be revoked by the Grantor by executing an instrument of revocation, by a conveyance of the property described above, or by a subsequently executed Beneficiary Deed.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand as of the day and year first above written.

Joni Duffield
JONI TONYA DUFFIELD

7

Bates County, MO**Property Report Card****Parcel Number: 1306023000000015000**

Name: UNDERWOOD, RICHARD & DAVID & J

Mail To Address: 891 SE 251 RD

Mail To City State Zip: DEEPWATER MO 64740-9614

Situs Address: No Situs Address

Legal Description: SE 1/4 NE 1/4 (EXC 1 AC. IN SW COR) & E 132' N 660' E 1/2 SW 1/4 NE 1/4 (^EXC RD R/\

Deeded Acres: 38.00

Modified

Book: 1041

Page: 0094

Market Value: \$56,800.00

Ag Appraised: \$8,000.00

Residential Appraised: \$44,700.00

Commercial Appraised: \$4,100.00

FCROP Appraised: \$0.00

Total Assessed: \$10,760.00

Ag Assessed: \$960.00

Residential Assessed: \$8,490.00

Commercial Assessed: \$1,310.00

FCROP Assessed: \$0.00

Previous Owner: CALLAHAN, GERALD W & ALTA J &

Date Acquired: 05-16-2019

Sales Price:

Source: O

Last Tax Bill: \$632.74

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1900

Base Area: 1236

Adjusted Area: 1345

Class: H/D

Rooms: 005

Bedrooms: 002

Condition: 39

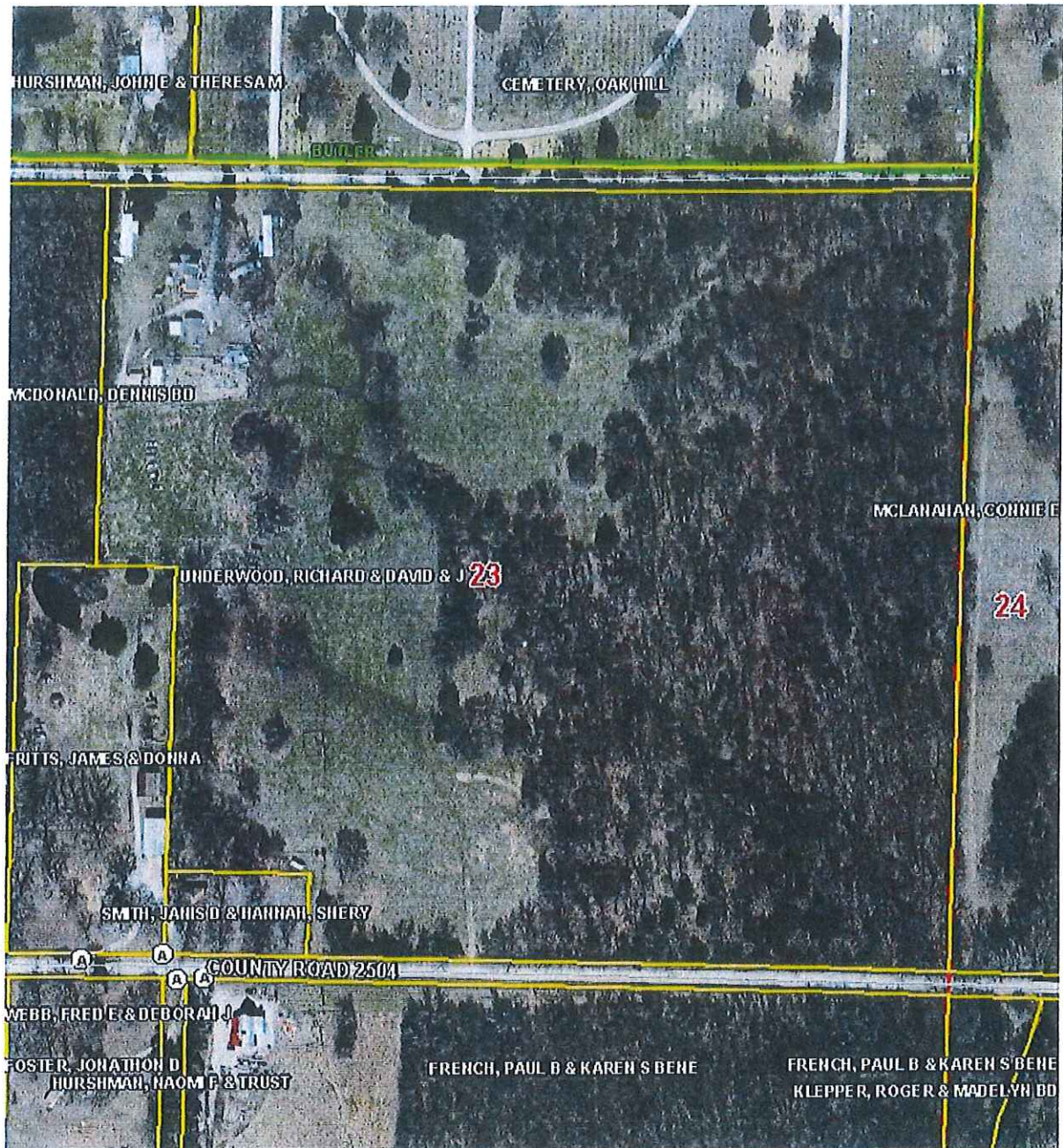
Improvement Value: \$23,360

AG Value: \$0

Residential Value: \$23,360

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1306023000000015000**

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Bates County, MO



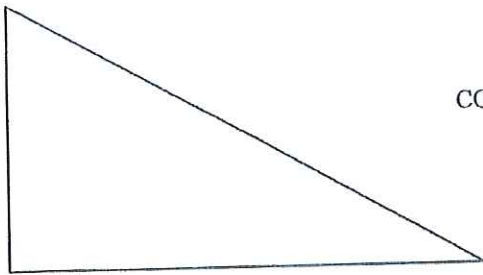
Legend

- E911 Road
- Address Point
- Major Highway
 - Interstate
 - Numbered State Highway
 - Lettered State Highway
 - County Roads / City Streets
- Butler Street Names
- Railroad
- Parcel
- Parcel Number/Acres
- Owner Name
- Corporate Limit Line
- Land Hook
 - DASHED LAND HOOK
 - SOLID LAND HOOK
- Section
- County Boundary

Notes

315.3 0 157.66 315.3 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



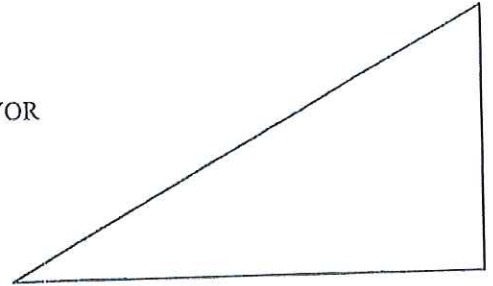
W.C. LETHCHO

COUNTY ENGINEER & SURVEYOR

103 W. DAKOTA

BUTLER, MO 64730

PHONE: 660-679-4031



SURVEY DESCRIPTION AT THE REQUEST OF:

CITY OF BUTLER

TRENT DIEHL

22 W. OHIO

BUTLER, MO 64730

UTILITY SERVICE EASEMENT DESCRIPTION

THE NORTH 660.00 FEET OF THE EAST 132.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN IN BATES COUNTY, MISSOURI;

AND

THE NORTH 660.00 FEET OF THE WEST 244.20 FEET OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN IN BATES COUNTY, MISSOURI.

I CERTIFY THIS DESCRIPTION TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

W.C. LETHCHO LS-1539

BATES COUNTY SURVEYOR

8 A

Bates County, MO**Property Report Card****Parcel Number:** 1307026000000002000**Name:** KENNEDY, WARREN 1/4**Mail To Address:** 20203 S STOCKMAN RD**Mail To City State Zip:** BELTON MO 64012-9279**Situs Address:** No Situs Address**Legal Description:** PT NE4 NE4 BGN @ SW COR (EXC RD R/W)**Deeded Acres:** 19.50**Book:** 0973**Page:** 0020**Market Value:** \$13,900.00**Ag Appraised:** \$0.00**Residential Appraised:** \$13,900.00**Commercial Appraised:** \$0.00**FCROP Appraised:** \$0.00**Total Assessed:** \$2,640.00**Ag Assessed:** \$0.00**Residential Assessed:** \$2,640.00**Commercial Assessed:** \$0.00**FCROP Assessed:** \$0.00**Previous Owner:** KENNEDY, WARREN 1/4**Date Acquired:** 12-31-2013**Sales Price:****Source:** O**Last Tax Bill:** \$154.60**Last Tax Bill Paid:** N**Improvement Info**

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FILE RECORD

ENTERED BOOK NO. 973 PAGE 20COMPARED _____ INDEX J/LLYNN K. BALLEY, ATTY
P.O. BOX 308
HARRISONVILLE, MO 64701STATE OF MISSOURI, BATES COUNTY, SS
LUCILLE MUNDEY, RECORDER OF DEEDS

Book: 973 Page: 20

Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 12/31/2013 8:30:00 AM

27 # 60062

BENEFICIARY DEED

THIS DEED, made this 27th day of December, 2013, wherein Michael E. Kennedy and Janice K. Kennedy of the County of Cass, State of Missouri, GRANTORS, without consideration, do, by these presents, GRANT AND ASSIGN, CONVEY AND CONFIRM unto GRANTEE BENEFICIARIES Krendi L. Gammill and Katherine M. Kennedy, (Mailing address of Grantors: 20203 South Stockman Road, Belton, Cass County, Missouri 64012)

All of our undivided one half (1/2) interest in the following described Real Estate situated in the County of Bates, State of Missouri, to-wit:

That part of the Southeast Quarter of the Southeast Quarter of Section 23, and that part of the Northeast Quarter of the Northeast Quarter of Section 26, in Township 40 of Range 31, bounded and described as follows: Beginning at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 26, and running thence North 01' West, 1873 feet to an iron pin; thence North, 89°44' East 540.5 feet to an iron pin; thence South 20°01' East, 412 feet to an iron pin; thence South 4°59' West 175.5 feet to an iron pin; thence South 33°29' East, 226.8 feet to an iron pin; thence South 1°21' East 245 feet to an iron pin; thence South 44°24' West, 288 feet to an iron pin; thence South 89°44' West, 650 feet to the place of beginning, all being in Sections 23 and 26, Township 40, Range 31, Together with all the right, title and interest of the first parties herein in a certain Lease covering the above tract of land, dated September 15, 1928, and recorded in the Recorder's Office of Bates County, Missouri, in Book 296 at Page 261.

To have and to hold the same together with all rights and appurtenances to the same belonging unto the said Grantee Beneficiary, his/her/their heirs and assigns forever.

THIS BENEFICIARY DEED is executed pursuant to Chapter 461, R.S.Mo. It is not effective to convey title to the above described real estate until Grantor's death or the death

§ B

Bates County, MO**Property Report Card****Parcel Number: 1306023000000012000**

Name: KENNEDY, WARREN & JUDITH 1/4

Mail To Address: 20203 S STOCKMAN RD

Mail To City State Zip: BELTON MO 64012-9279

Situa Address: ~

Legal Description: PT SE4 SE4 BGN @ SW COR ^

Deeded Acres: 8.00

Book: 0973

Page: 0020

Market Value: \$1,500.00

Ag Appraised: \$1,500.00

Residential Appraised: \$0.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$180.00

Ag Assessed: \$180.00

Residential Assessed: \$0.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: KENNEDY, WARREN & JUDITH 1/4

Date Acquired: 12-31-2013

Sales Price:

Source: O

Last Tax Bill: \$10.53

Last Tax Bill Paided: Y

Improvement Info

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Bates County, MO**Property Report Card****Parcel Number: 1306023000000012000**

Name: KENNEDY, WARREN & JUDITH 1/4

Situs Address: ~

Deeded Acres: 8.00



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FILE RECORD

ENTERED BOOK NO. 973 PAGE 20COMPARED _____ INDEX J/LLYNN K. BALLEY, ATTY
P.O. BOX 368
HARRISONVILLE, MO 64701STATE OF MISSOURI, BATES COUNTY, SS
LUCILLE MUNDEY, RECORDER OF DEEDS

Book: 973 Page: 20

Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 12/31/2013 8:30:00 AM

27 # 60062

BENEFICIARY DEED

THIS DEED, made this 27 day of December, 2013, wherein Michael E. Kennedy and Janice K. Kennedy of the County of Cass, State of Missouri, GRANTORS, without consideration, do, by these presents, GRANT AND ASSIGN, CONVEY AND CONFIRM unto GRANTEE BENEFICIARIES Krendl L. Gammlil and Katherine M. Kennedy. (Mailing address of Grantors: 20203 South Stockman Road, Belton, Cass County, Missouri 64012)

All of our undivided one half (1/2) interest in the following described Real Estate situated in the County of Bates, State of Missouri, to-wit:

That part of the Southeast Quarter of the Southeast Quarter of Section 23, and that part of the Northeast Quarter of the Northeast Quarter of Section 26, in Township 40 of Range 31, bounded and described as follows: Beginning at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 26, and running thence North 01' West, 1873 feet to an iron pin; thence North, 89°44' East 540.5 feet to an iron pin; thence South 20°01' East, 412 feet to an iron pin; thence South 4°59' West 175.5 feet to an iron pin; thence South 33°29' East, 226.8 feet to an iron pin; thence South 1°21' East 245 feet to an iron pin; thence South 44°24' West, 288 feet to an iron pin; thence South 89°44' West, 650 feet to the place of beginning, all being in Sections 23 and 26, Township 40, Range 31. Together with all the right, title and interest of the first parties herein in a certain Lease covering the above tract of land, dated September 15, 1928, and recorded in the Recorder's Office of Bates County, Missouri, in Book 296 at Page 261.

To have and to hold the same together with all rights and appurtenances to the same belonging unto the said Grantee Beneficiary, his/her/their heirs and assigns forever.

THIS BENEFICIARY DEED is executed pursuant to Chapter 461, R.S.Mo. It is not effective to convey title to the above described real estate until Grantor's death or the death

9

Bates County, MO
Property Report Card

Parcel Number: 1306023000000011000

Name: FRITTS, JAMES & DONNA

Mail To Address: 1786 NE COUNTY RD 2504

Mail To City State Zip: BUTLER MO 64730-9328

Situs Address: No Situs Address

Legal Description: W 610.5'-+ NW 1/4 SE 1/4 & A TR NE 1/4 SW 1/4 BGN CENTER SEC. 23, W 680.5'^S 1025',

Deeded Acres: 33.80

Modified

Book: 0712

Page: 0302

Market Value: \$6,500.00

Ag Appraised: \$6,500.00

Residential Appraised: \$0.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$780.00

Ag Assessed: \$780.00

Residential Assessed: \$0.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: BARNES, EARL

Date Acquired: 02-23-1999

Sales Price:

Source: O

Last Tax Bill: \$45.67

Last Tax Bill Paid: N

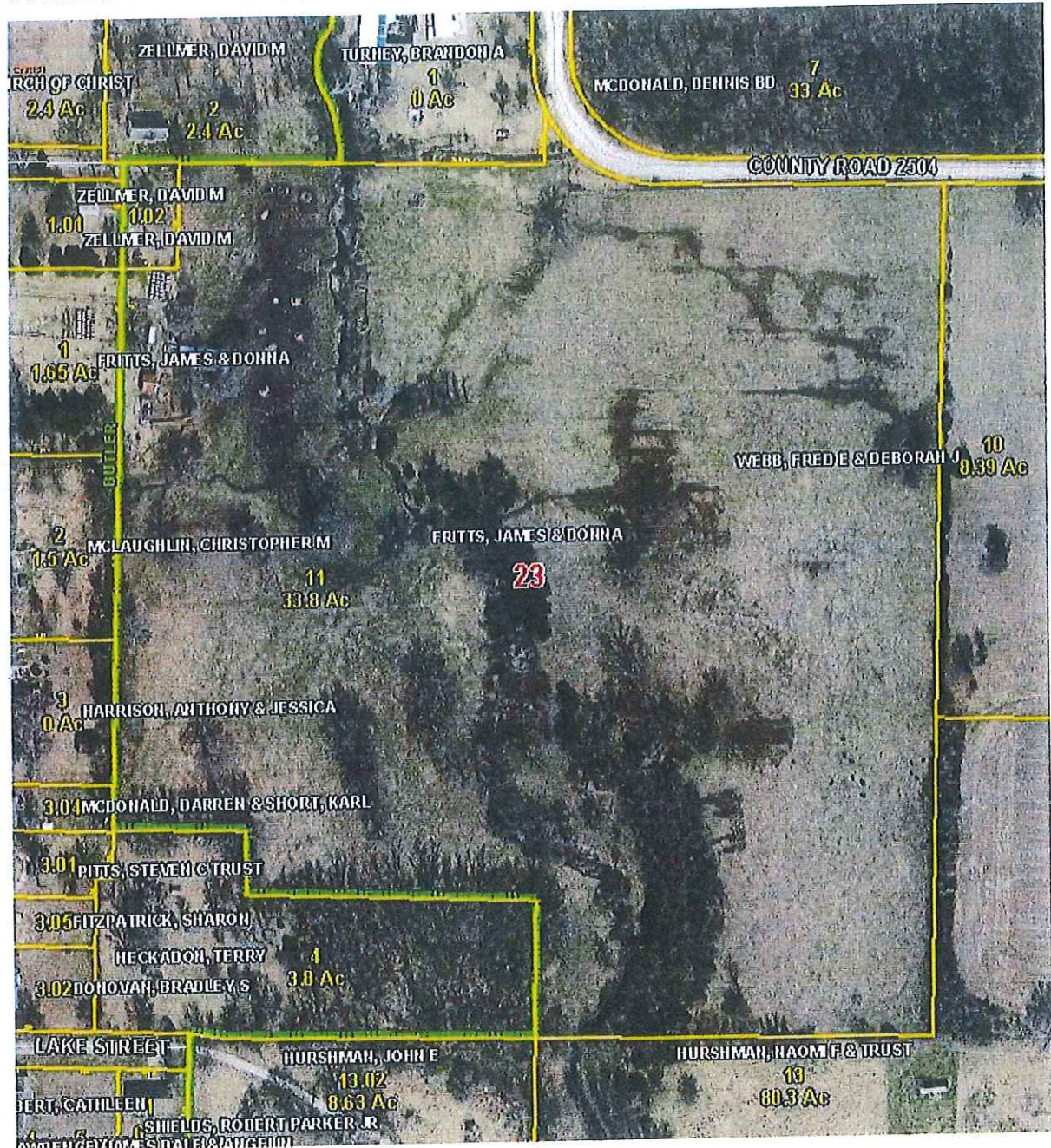
Improvement Info

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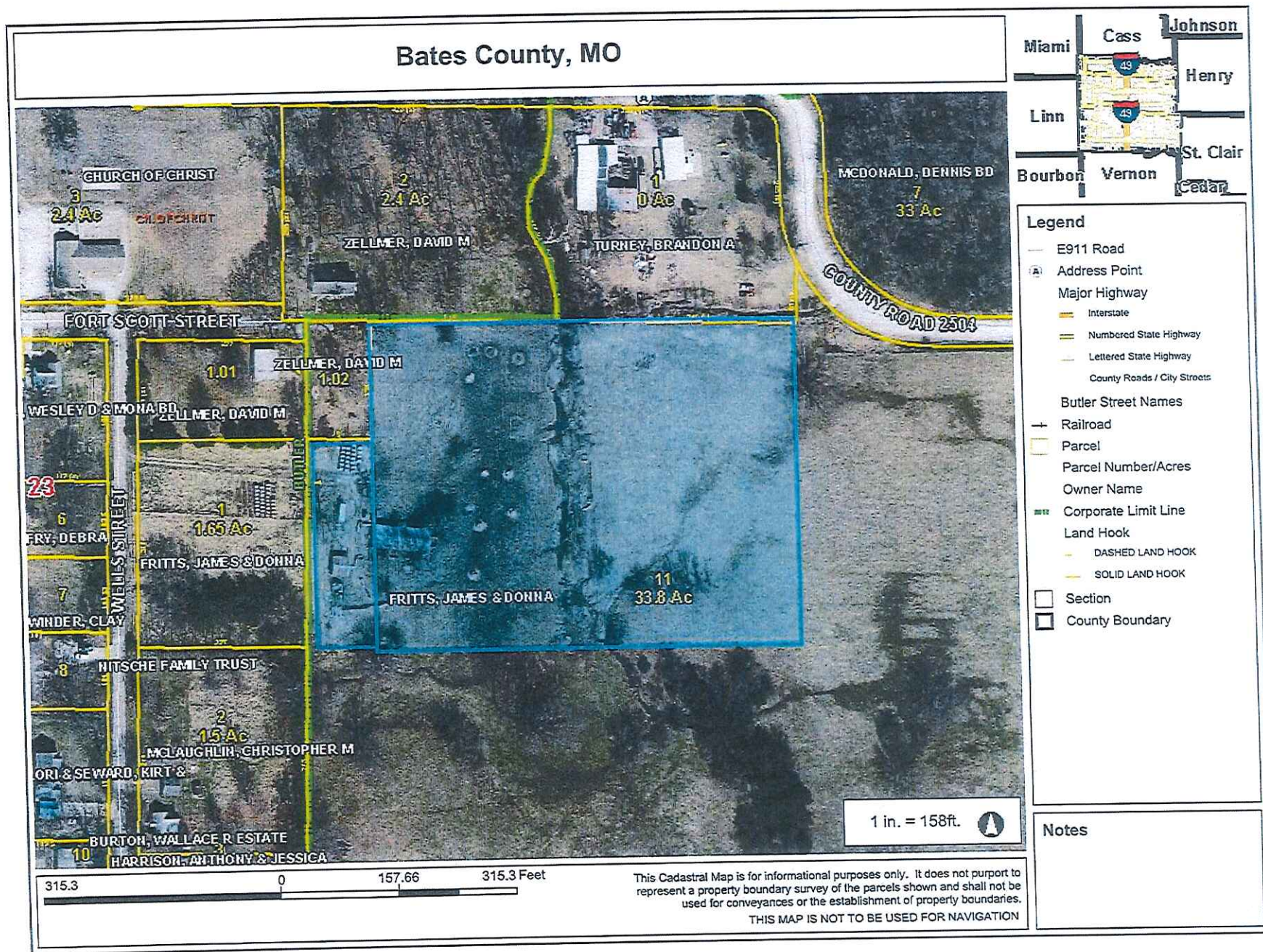
Bates County, MO

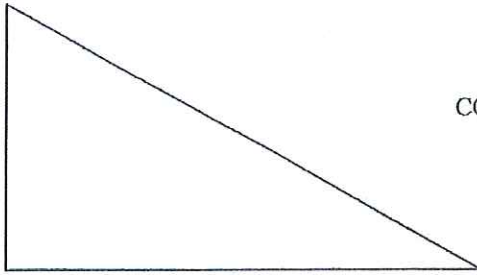
Property Report Card

Parcel Number: 1306023000000011000



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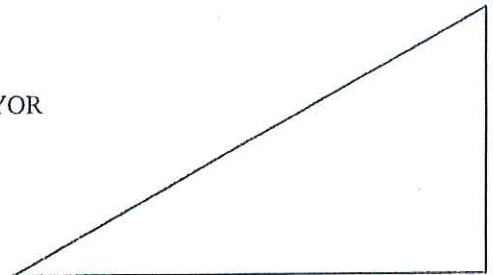
W.C. LETHCHO

COUNTY ENGINEER & SURVEYOR

103 W. DAKOTA

BUTLER, MO 64730

PHONE: 660-679-4031



SURVEY DESCRIPTION AT THE REQUEST OF:

CITY OF BUTLER

TRENT DIEHL

22 W. OHIO

BUTLER, MO 64730

UTILITY SERVICE EASEMENT DESCRIPTION

THE NORTH 457.00 FEET OF THE EAST 680.50 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN IN BATES COUNTY, MISSOURI; EXCEPT THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 31 WEST OF THE 5TH PRINCIPAL MERIDIAN, IN BATES COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 23, THENCE WEST A DISTANCE OF 907.50 FEET TO THE TRUE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; THENCE SOUTH 136.00 FEET; THENCE EAST 320.00 FEET; THENCE NORTH 136.00 FEET; THENCE WEST 320.00 FEET TO THE POINT OF BEGINNING. SUBJECT TO ALL EASEMENTS OF RECORD.

I CERTIFY THIS DESCRIPTION TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

W.C. LETHCHO LS-1539

BATES COUNTY SURVEYOR

3-24-22

10

Bates County, MO**Property Report Card****Parcel Number: 1308027000000027010****Name: HEDRICK, CHANCE & SHANYA****Mail To Address: 1359 NE KELLY DR****Mail To City State Zip: BUTLER MO 64730-9452****Situs Address: No Situs Address****Legal Description: S 177.80' OF LOT 15 EVERGREEN SUBD^****Deeded Acres: 1.82****Book: 1046****Page: 0292****Market Value: \$16,400.00****Ag Appraised: \$0.00****Residential Appraised: \$16,400.00****Commercial Appraised: \$0.00****FCROP Appraised: \$0.00****Total Assessed: \$3,120.00****Ag Assessed: \$0.00****Residential Assessed: \$3,120.00****Commercial Assessed: \$0.00****FCROP Assessed: \$0.00****Previous Owner:****Date Acquired: 11-23-2021****Sales Price:****Source: O****Last Tax Bill: \$0.00****Last Tax Bill Paid: N****Improvement Info**

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Bates County, MO
Property Report Card

Parcel Number: 1308027000000027010



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Recorded in Bates County, Missouri

Recording Date/Time: 11/23/2021 at 03:19:14 PM

Book: 1046 Page: 292

Instr #: 202103272

Pages: 2

Fee: \$27.00 S



Electronically Recorded

Danyelle Baker
Recorder of Deeds

WARRANTY DEED

THIS DEED, made and entered into this 23rd day of November, 2021, by and between SHANE MCCOUN and NICOLE MCCOUN, husband and wife, Grantors, and CHANCE HEDRICK and SHANYA HEDRICK, husband and wife, Grantees. Grantees' mailing address is 1359 NE Kelly Drive, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

The South 177.80 feet of Lot 15, in Evergreen, a Subdivision in Bates County, Missouri. Subject to all easements of record.

Ingress/Egress Description and Utility Easement

15.00 feet on either side of described center line: Commencing at the Southeast corner of Lot 10, in Evergreen, a Subdivision in Bates County, Missouri, for the point of beginning of the land to be described: thence on an assumed bearing of South 83 degrees 56 minutes 00 seconds West, along the South line of said Lot 10 and parallel with the South line of said Subdivision, a distance of 446.20 feet, more or less, to the East line of the Public Road.

Utility Easement

15.00 feet on either side of described center line: Commencing at the Southwest corner of Lot 10, in Evergreen, a Subdivision in Bates County, Missouri, for the point of beginning of the land to be described: thence on an assumed bearing of North 06 degrees 25 minutes 00 seconds West, along the West line of said Lot 10, a distance of 152.20 feet, to the Northwest corner of said Lot 10.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

Bates County, MO**Property Report Card****Parcel Number: 1308027000000023000**

Name: CASTROGIOVANNI, EVELYN K

Mail To Address: 131 NE KELLY DR

Mail To City State Zip: BUTLER MO 64730-2412

Situs Address: No Situs Address

Legal Description: LOT 2 EVERGREEN ADD, BUTLER^

Deeded Acres: 0.00

Book: 1044

Page: 0675

Market Value: \$8,200.00

Ag Appraised: \$0.00

Residential Appraised: \$8,200.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$1,560.00

Ag Assessed: \$0.00

Residential Assessed: \$1,560.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: FISCHER, EVELYN KATHLEEN

Date Acquired: 08-06-2021

Sales Price:

Source: O

Last Tax Bill: \$91.35

Last Tax Bill Paid: Y

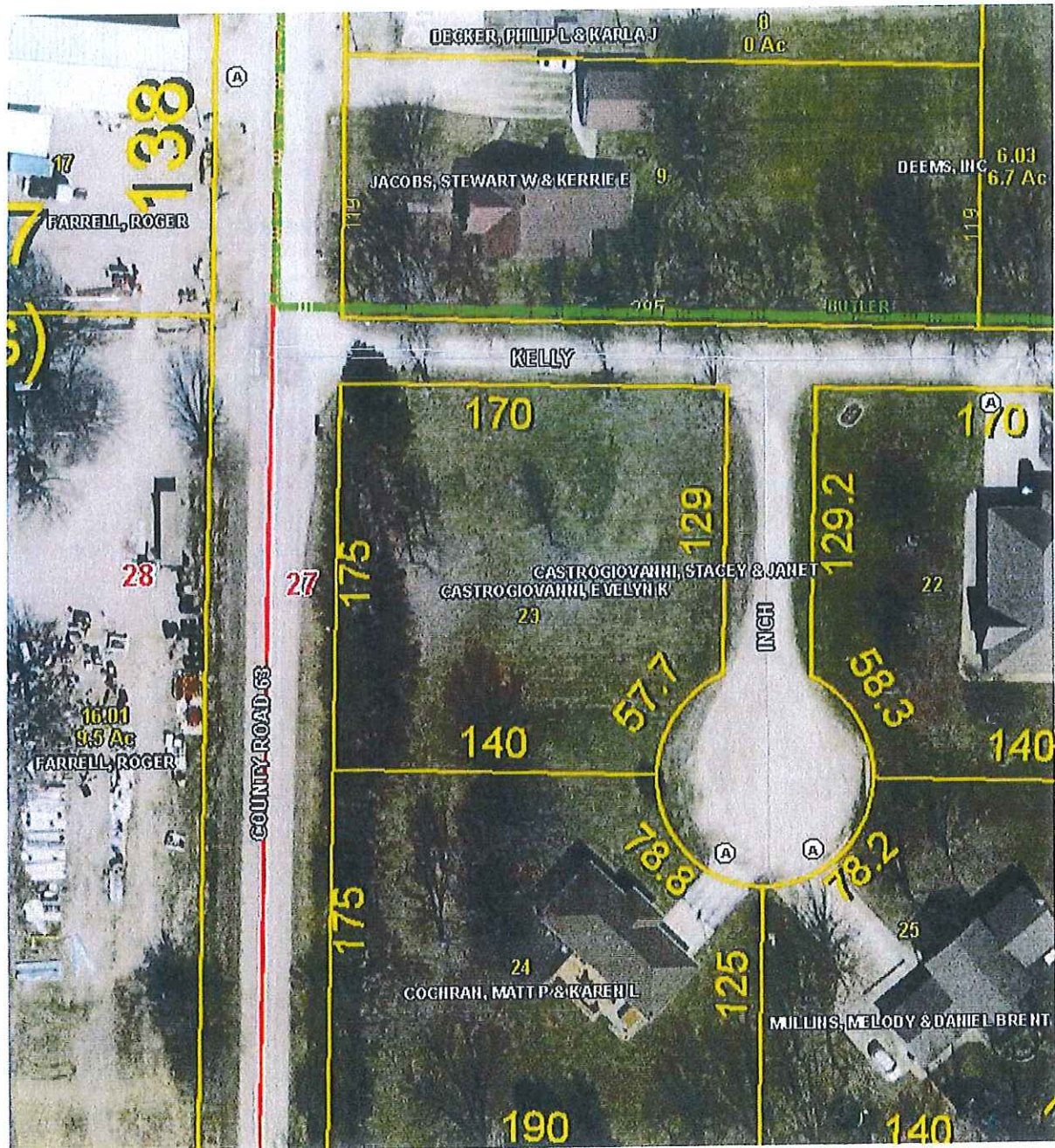
Improvement Info

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Bates County, MO

Property Report Card

Parcel Number: 1308027000000023000



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Recorded in Bates County, Missouri

Recording Date/Time: 08/06/2021 at 02:22:25 PM

Book: 1044 Page: 675

Instr #: 202102102

Pages: 2
Fee: \$27.00 S

Electronically Recorded

Danyelle Baker
Recorder of Deeds**QUIT-CLAIM DEED**

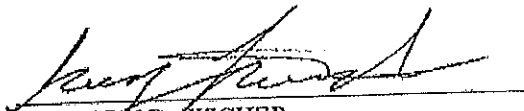
This Indenture, made on the 4th day of ^{August} ~~July~~, 2021, by and between GREGORY D. FISCHER, a single person, whose mailing address is 12445 SE County Road 7586, Rockville, Missouri 64780 ("Grantor"), and EVELYN KATHLEEN CASTROGIOVANNI, a single person, whose mailing address is 131 NE Kelly Drive, Butler, Missouri 64730 ("Grantee").

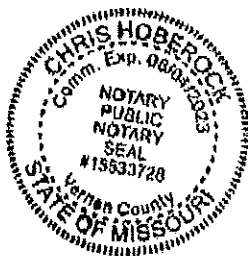
WITNESS, that Grantor, for and in consideration of the sum of \$10.00 and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents **REMISE, RELEASE AND FOREVER QUIT CLAIM** unto Grantee, her heirs, successors and assigns, the following described lots, tracts or parcels of land lying, being and situate in the County of Bates and State of Missouri, to-wit:

Lot 2 Evergreen Estates, a subdivision of Bates County, Missouri, as shown in Plat Book 4, Page 11 in Deed Records of Bates County, Missouri.

TO HAVE AND TO HOLD THE SAME, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the Grantee and unto her heirs, successors and assigns forever; so that neither the Grantor nor her heirs, successors or assigns, nor any other person or persons, for whom or in whose name or behalf, will hereinafter claim or demand any right or title to the described premises or any part thereof, but they and each of them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed as of the day and year first above written.


GREGORY D. FISCHER



12 A.

Bates County, MO**Property Report Card****Parcel Number: 1308027000000027000**

Name: MCCOUN, SHANE & NICOLE

Mail To Address: 71 NE CEDAR DR

Mail To City State Zip: BUTLER MO 64730-9452

Situs Address: No Situs Address

Legal Description: LOT 13 EVERGREEN ADD^AND LOTS 10 11 AND 15^

Deeded Acres: 6.67

Book: 1042

Page: 0535

Market Value: \$158,100.00

Ag Appraised: \$2,300.00

Residential Appraised: \$155,800.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$29,880.00

Ag Assessed: \$280.00

Residential Assessed: \$29,600.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: PHILLIPS, KELLY D & LINDA

Date Acquired:

Sales Price:

Source:

Last Tax Bill: \$1,749.80

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Year Built: 1986

Base Area: 1326

Adjusted Area: 3299

Class: H/C

Rooms: 000

Bedrooms: 000

Condition: 76

Improvement Value: \$145,870

AG Value: \$0

Residential Value: \$145,870

Commercial Value: \$0

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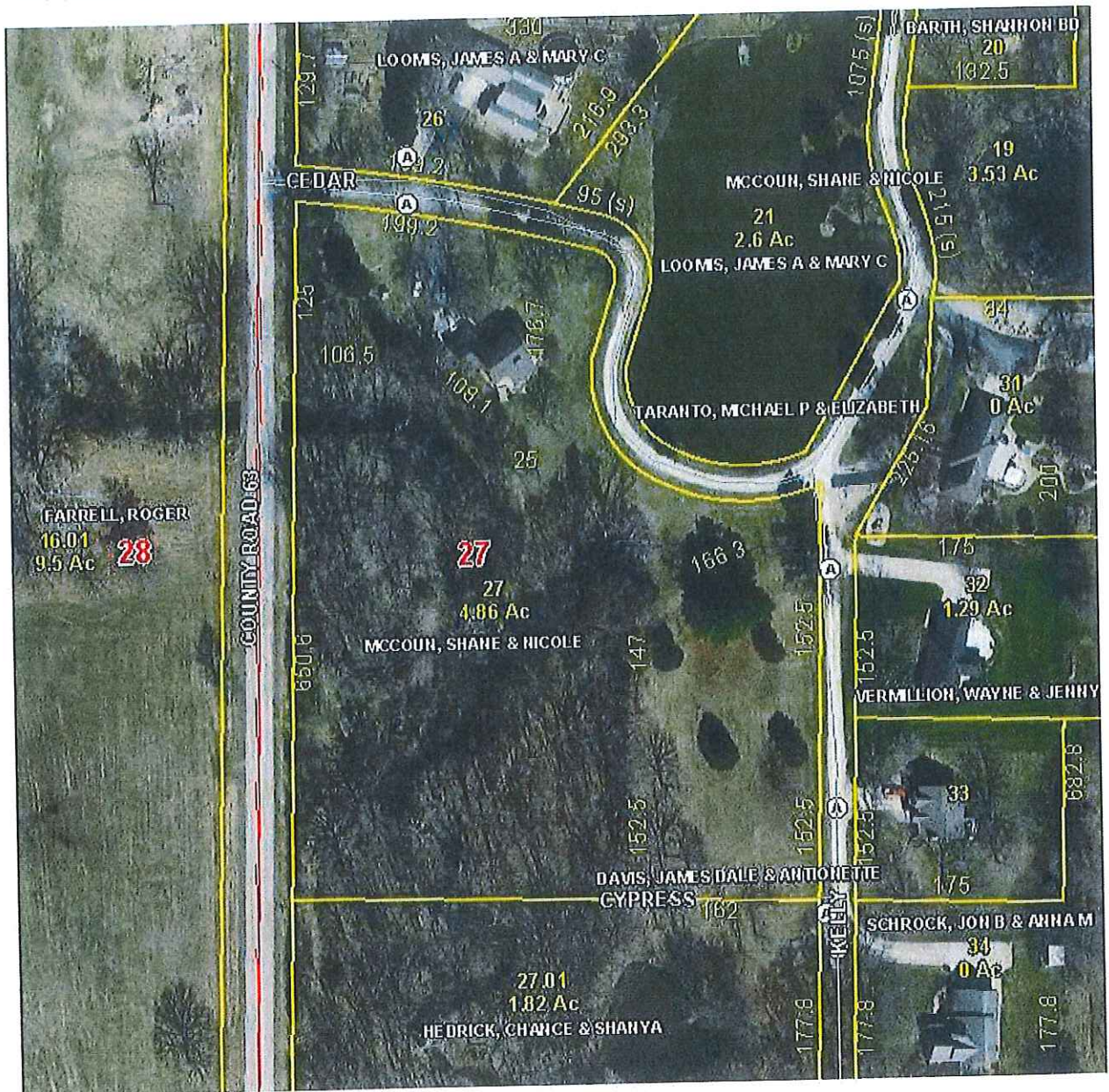
Bates County, MO Property Report Card

Parcel Number: 1308027000000027000

Name: MCCOUN, SHANE & NICOLE

Situs Address: No Situs Address

Deeded Acres: 4.86



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Recorded in Bates County, Missouri



Recording Date/Time: 08/15/2019 at 03:19:16 PM

Book: 1042 Page: 535

Instr #: 201901636

Pages: 2

Fee: \$27.00 \$ 20190000506



WARRANTY DEED

THIS DEED, made and entered into this 15th day of August, 2019, by and between LINDA L. PHILLIPS, a single person, Grantor, and SHANE M. MCCOUN and NICOLE MCCOUN, husband and wife, Grantees. Grantees' mailing address is 609 Howard, Butler, Missouri 64730.

WITNESSETH, That the said Grantor, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

Lots 10, 11, 15, and all of Lot 13 except the North 30 feet of said Lot 13, in EVERGREEN, a subdivision in Bates County, Missouri, together with an easement over said North 30 feet of said Lot 13 to the adjoining road for the purpose of construction of a driveway to the described property.

Grantor warrants that Elsie Phillips and Elsie M. Phillips are one and the same person.

Grantor further warrants that Kelly D. Phillips died on October 12, 2018 while still married to Linda L. Phillips, never having been divorced.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantor hereby covenanting that said premises are free and clear of any incumbrances and that said Grantor and the heirs, executors, and administrators of such Grantor shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand the day and year first above written.


LINDA L. PHILLIPS

12 B.

**Bates County, MO
Property Report Card****Parcel Number: 1308027000000019000**

Name: MCCOUN, SHANE & NICOLE

Mail To Address: 71 NE CEDAR DR

Mail To City State Zip: BUTLER MO 64730-1836

Situs Address: No Situs Address

Legal Description: LOT 14 & THE W 50' OF THE E 494' OF NW 1/4 SW 1/4 EXC RD R/W^EVERGREEN ADD

Deeded Acres: 3.53

Book: 1042

Page: 0570

Market Value: \$11,600.00

Ag Appraised: \$11,600.00

Residential Appraised: \$0.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$1,390.00

Ag Assessed: \$1,390.00

Residential Assessed: \$0.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: PHILLIPS, LINDA L

Date Acquired: 08-22-2019

Sales Price:

Source: O

Last Tax Bill: \$81.40

Last Tax Bill Paid: N

Improvement Info

Structure: Barn

Year Built: 1979

Base Area: 1280

Adjusted Area: 1280

Class: B-43

Rooms: 2yy

Bedrooms: 000

Condition: 66

Improvement Value: \$7,910

AG Value: \$7,910

Residential Value: \$0

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000019000**

Name: MCCOUN, SHANE & NICOLE

Situation Address: No Situs Address

Deeded Acres: 3.53



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Recorded In Bates County, Missouri



Recording Date/Time: 08/22/2019 at 10:42:24 AM

Book: 1042 Page: 570

Instr #: 201901671

Pages: 2

Fee: \$27.00 \$ 20190000631



WARRANTY DEED

THIS DEED, made and entered into this 22nd day of August, 2019, by and between LINDA L. PHILLIPS, a single person Grantor, and SHANE M. MCCOUN and NICOLE MCCOUN, husband and wife, Grantees. Grantees' mailing address is 609 Howard, Butler, Missouri 64730.

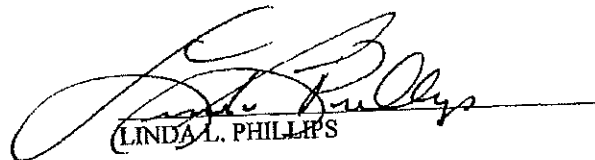
WITNESSETH, That the said Grantor, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

Lot 14 in Evergreen Estates, a subdivision of Bates County, Missouri, as shown in Plat Book 4, Page 11 in Deed Records of Bates County, Missouri, EXCEPT the North 200.00 feet of the South 682.8 feet of said Lot 14.

Also the West 50 feet of the East 494 feet of the Northwest Quarter of the Southwest Quarter of Section 27, Township 40, Range 31, Bates County, Missouri, EXCEPT the North 200.00 feet of the South 682.8 feet thereof.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantor hereby covenanting that said premises are free and clear of any incumbrances and that said Grantor and the heirs, executors, and administrators of such Grantor shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand the day and year first above written.


(LINDA L. PHILLIPS)

13

Bates County, MO**Property Report Card****Parcel Number: 1307026020001032000**

Name: HEIMAN, CASEY & RACHEL

Mail To Address: PO BOX 367

Mail To City State Zip: BUTLER MO 64730-0367

Situation Address: 1205 S MAIN BUTLER

Legal Description: TH PT W2 SW4 NW4 COMM AT SW COR OF W2 N ALONG W LINE 525.50' TO NW COR

Deeded Acres: 9.67

Book: 1044

Page: 0293

Market Value: \$26,800.00

Ag Appraised: \$0.00

Residential Appraised: \$26,800.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$5,090.00

Ag Assessed: \$0.00

Residential Assessed: \$5,090.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: KEEBLE, ROBERT MICHEAL & CATHE

Date Acquired: 06-30-2021

Sales Price:

Source: O

Last Tax Bill: \$331.24

Last Tax Bill Paid: Y

Improvement Info

Structure: Barn

Year Built: 1940

Base Area: 360

Adjusted Area: 560

Class: B-52

Rooms: 001

Bedrooms: 000

Condition: 38

Improvement Value: \$3,000

AG Value: \$0

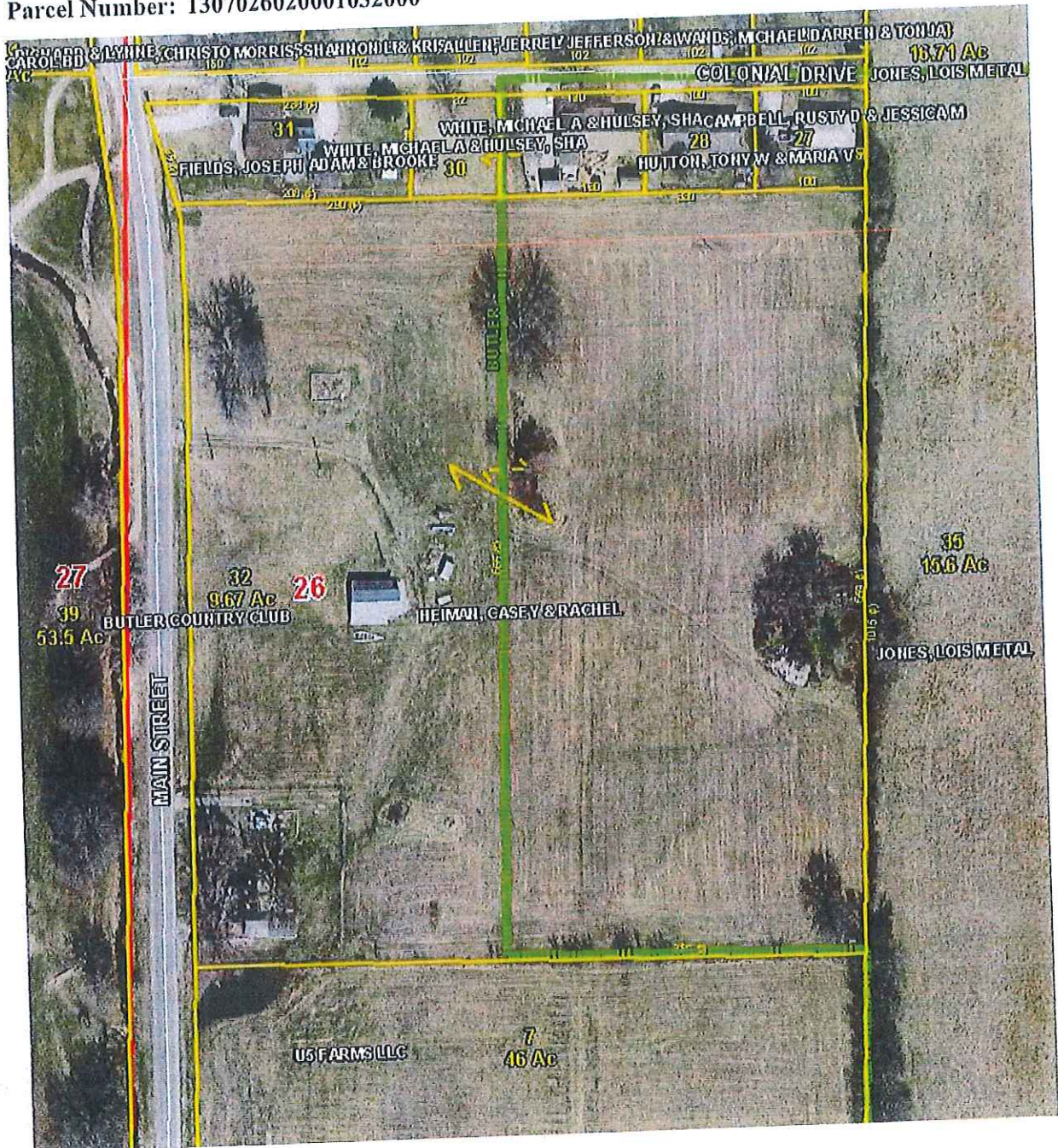
Residential Value: \$3,000

Commercial Value: \$0

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**Bates County, MO
Property Report Card**

Parcel Number: 1307026020001032000



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Recorded in Bates County, Missouri

Recording Date/Time: 06/30/2021 at 01:01:42 PM

Book: 1044 Page: 293

Instr #: 202101719

Pages: 2
Fee: \$27.00 S

Electronically Recorded

Danyelle Baker
Recorder of Deeds

WARRANTY DEED

THIS DEED, made and entered into this 30th day of June, 2021, by and between ROBERT MICHAEL KEEBLE and CATHERINE J. KEEBLE, husband and wife, Grantors, and CASEY HEIMAN and RACHEL HEIMAN, husband and wife, Grantees. Grantees' mailing address is P. O. BOX 367, BUTLER, MO 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

That part of the West Half of the Southwest Quarter of the Northwest Quarter of Section 26, Township 40 North, Range 31 West of the 5th Principal Meridian in Bates County, Missouri, described as follows: Commencing at the Southwest corner of said West Half of the Southwest Quarter of the Northwest Quarter; thence on an assumed bearing of North along the West line of said Section 26 a distance of 525.50 feet to the Northwest corner of the South 8 acres of the said West Half of the Southwest Quarter of the Northwest Quarter for the point of beginning of the land to be described; thence continuing on a bearing of North a distance of 681.28 feet to a point 100 feet South of the Southwest corner of the Hillcrest Addition as recorded in Slide Number 102 in the Bates County Recorder's Office; thence South 89 degrees 54 minutes 30 seconds East parallel with the South line of said Hillcrest Addition a distance of 663.15 feet; thence on a bearing of South a distance of 681.28 feet; thence North 89 degrees 54 minutes 30 seconds West a distance of 663.15 feet to the point of beginning.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

Bates County, MO
Property Report Card**Parcel Number: 1308027000000035000**

Name: AUNDREAE, MASON L/BLASER, TIFF

Mail To Address: 1161B NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-8617

Situs Address: No Situs Address

Legal Description: N2 SW4 SW4 (EXC RD R/W)

Deeded Acres: 20

Book: 1043

Page: 1693

Market Value: \$185,800.00

Ag Appraised: \$3,700.00

Residential Appraised: \$182,100.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$35,040.00

Ag Assessed: \$440.00

Residential Assessed: \$34,600.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: NAMETH, KAREN LYNNE

Date Acquired: 01-19-2021

Sales Price:

Source: O

Last Tax Bill: \$2,051.98

Last Tax Bill Paid: N

Improvement Info

Structure: Resturant

Year Built: 1962

Base Area: 1464

Adjusted Area: 1546

Class: H/D

Rooms: 002

Bedrooms: 000

Condition: 38

Improvement Value: \$34,420

AG Value: \$0

Residential Value: \$34,420

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000035000**

Name: NAMETH, SCOTT

Situs Address: No Situs Address

Deeded Acres: 20.00



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FINAL SETTLEMENT APPROVED; FINDING AND DECREE OF SUCCESSION;
ORDER OF DISCHARGE

Testate estate

STATE OF MISSOURI)
) ss.
COUNTY OF BATES)

FILED
12/31/2020
Bates County
Circuit Court

IN THE CIRCUIT COURT OF BATES COUNTY, MISSOURI
PROBATE DIVISION

In the Estate of KAREN L. NAMETH, Deceased.

Estate No.19BS-PR00073

On this 31st day of December, 2020, the Court takes up the final settlement and petition for determination of rights of succession, filed herein December 8, 2020, by AUNDREAE L. MASON, Personal Representative of the estate of Karen L. Nameth, deceased, and finds that decedent died testate, domiciled in and a resident of Bates County, Missouri; that due and timely notice of the filing of said settlement and petition was given according to law, and proof thereof filed herein; that due and timely notice, by publication and ordinary mail, of the granting of letters on said estate, the first publication of which was had January 10, 2020, was given according to law, and proof thereof filed herein within twenty days after the completion of such publication; and that no objections to said settlement or petition have been filed and that the time allowed therefor has expired.

The Court further finds that the Will of decedent was admitted to probate December 30, 2019, and finds and adjudges that the successors to the descendible interest of the decedent in and to the following described real property:

Tract I: The North Half of the Southwest Quarter of the Southwest Quarter of Section 27, Township 40, Range 31, Bates County, Missouri.
and the extent and character of their interests therein, as of said date of death and pursuant to the designated article or paragraph of said Will, are as follows:

<u>Tract No.</u>	<u>Devisee(s)</u>	<u>Article or Parag.</u>	<u>Interest</u>
I	Aundreae L. Mason 1161 A NE County Road 63 Butler, Missouri 64730	IX	1/3
I	Tiffany L. Blaser 1652 NW Skyline Drive Butler, Missouri 64730	IX	1/3
I	Scott A. Nameth 7508 West 156 th Street Overland Park, Kansas 66223	IX	1/3

The Court further finds that all legacies and bequests under said Will, other than those set forth herein, have been paid and satisfied; that said estate is in a condition to be closed; that all allowed claims have been paid, and that said settlement has been audited and the balance shown thereon, consisting of \$0- in cash and other personal property valued at \$1,300.00 is correct.

The Court further finds that all legacies and bequests under said Will, other than those set forth herein, have been paid and satisfied, and orders, adjudges and decrees that the balance of cash and other personal property as shown on said settlement be distributed, pursuant to the designated article or paragraph of said Will, to the legatees thereunder as follows:

<u>Legatee</u>	<u>Art. of Will</u>	<u>Cash</u>	<u>Other per. property</u>
Aundreae L. Mason	IX	0	433.33
Tiffany L. Blaser	IX	0	433.33
Scott A. Nameth	IX	0	433.34

IT IS THEREFORE ORDERED AND ADJUDGED that said settlement be, and is hereby, approved; that all orders of partial distribution heretofore made by hereby confirmed; and that said Personal Representative be hereby discharged.



Z:\CLIENTS\Nameth, Karen-Estate\order of distribution - testate, real property only.wpd

JUDGE

Bates County, MO
Property Report Card**Parcel Number: 1308034000000003000**

Name: HOBBS, WILLIAM K AND CARRIE J

Mail To Address: 895 NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-9452

Situation Address: No Situation Address

Legal Description: PT NW4 NW4 BGN 445' S OF NW COR (EXC RD R/W)

Deeded Acres: 10.00

Book: 0923

Page: 0141

Market Value: \$92,200.00

Ag Appraised: \$0.00

Residential Appraised: \$92,200.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$17,520.00

Ag Assessed: \$0.00

Residential Assessed: \$17,520.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: DUGAN, BRENDA

Date Acquired: 03-04-2010

Sales Price:

Source: O

Last Tax Bill: \$1,025.98

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1970

Base Area: 1152

Adjusted Area: 2011

Class: H/D

Rooms: 006

Bedrooms: 003

Condition: 65

Improvement Value: \$66,510

AG Value: \$0

Residential Value: \$66,510

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308034000000003000**

Name: HOBBS, WILLIAM K AND CARRIE J

Situs Address: No Situs Address

Deeded Acres: 10.00

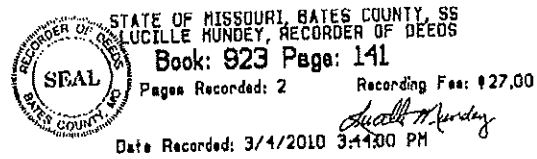


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FILE RECORD
 ENTERED BOOK NO. 923 PAGE 41
 COMPARED _____ INDEX CL

BAT
 C.R.

2
 27



WARRANTY DEED

THIS DEED, Made and entered into this 4th day of March, A.D., 2010, by and between

James W. Dugan and Brenda Ann Dugan, husband and wife, Grantors,
 party or parties of the first part, AND

William K. Hobbs and Carrie J. Hobbs, husband and wife, Grantees,
 party or parties of the second part
 (Grantee's mailing address is:) 4. 4 Box 390, Butler, MO 64730

WITNESSETH, that the said party or parties of the First part, for and in consideration of the sum of ten dollars and other valuable considerations paid by the said party or parties of the Second part, the receipt of which is hereby acknowledged, does or do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said party or parties of the Second part, the following described real estate in the County of Bates, in the State of MISSOURI to-wit:

A tract of land described as beginning at a point 30 rods South of the Northwest corner of Section Thirty-four (34), Township Forty (40), Range Thirty-one (31), thence running East 80 rods, thence South 20 rods, thence West 80 rods, thence North 20 rods to the point of beginning, EXCEPT there from all that part off the West side of said tract taken for U.S. Highway Number 71 and service road all in Bates County, Missouri.

Subject to easements, reservations, restrictions and conditions of record, if any.

Grantors further warrant that Brenda Ann Dugan and Brenda Ann Cunningham is one and the same person.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said party or parties of the Second part, and to their heirs and assigns, forever; the said party or parties of the first part hereby covenanting that said premises are free and clear of any encumbrances and that said party or parties and the heirs, executors and administrators of such party or parties shall and will warrant and defend the title to the premises, unto the said party or parties of the second part, and to their heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever.

BOOK 923

PAGE 141

Bates County, MO**Property Report Card****Parcel Number: 1308028000000017000**

Name: FARRELL, ROGER

Mail To Address: 1492 NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-9452

Situs Address: No Situs Address

Legal Description: PT SE4 NE4 BGN @ SE COR (METED)

Deeded Acres: 0.00

Book: 0586

Page: 0278

Market Value: \$27,100.00

Ag Appraised: \$0.00

Residential Appraised: \$8,600.00

Commercial Appraised: \$18,500.00

FCROP Appraised: \$0.00

Total Assessed: \$7,550.00

Ag Assessed: \$0.00

Residential Assessed: \$1,630.00

Commercial Assessed: \$5,920.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 02-01-1987

Sales Price: \$0.00

Source:

Last Tax Bill: \$453.98

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1975

Base Area: 312

Adjusted Area: 355

Class: H/E-

Rooms: 001

Bedrooms: 000

Condition: 61

Improvement Value: \$3,080

AG Value: \$0

Residential Value: \$3,080

Commercial Value: \$0

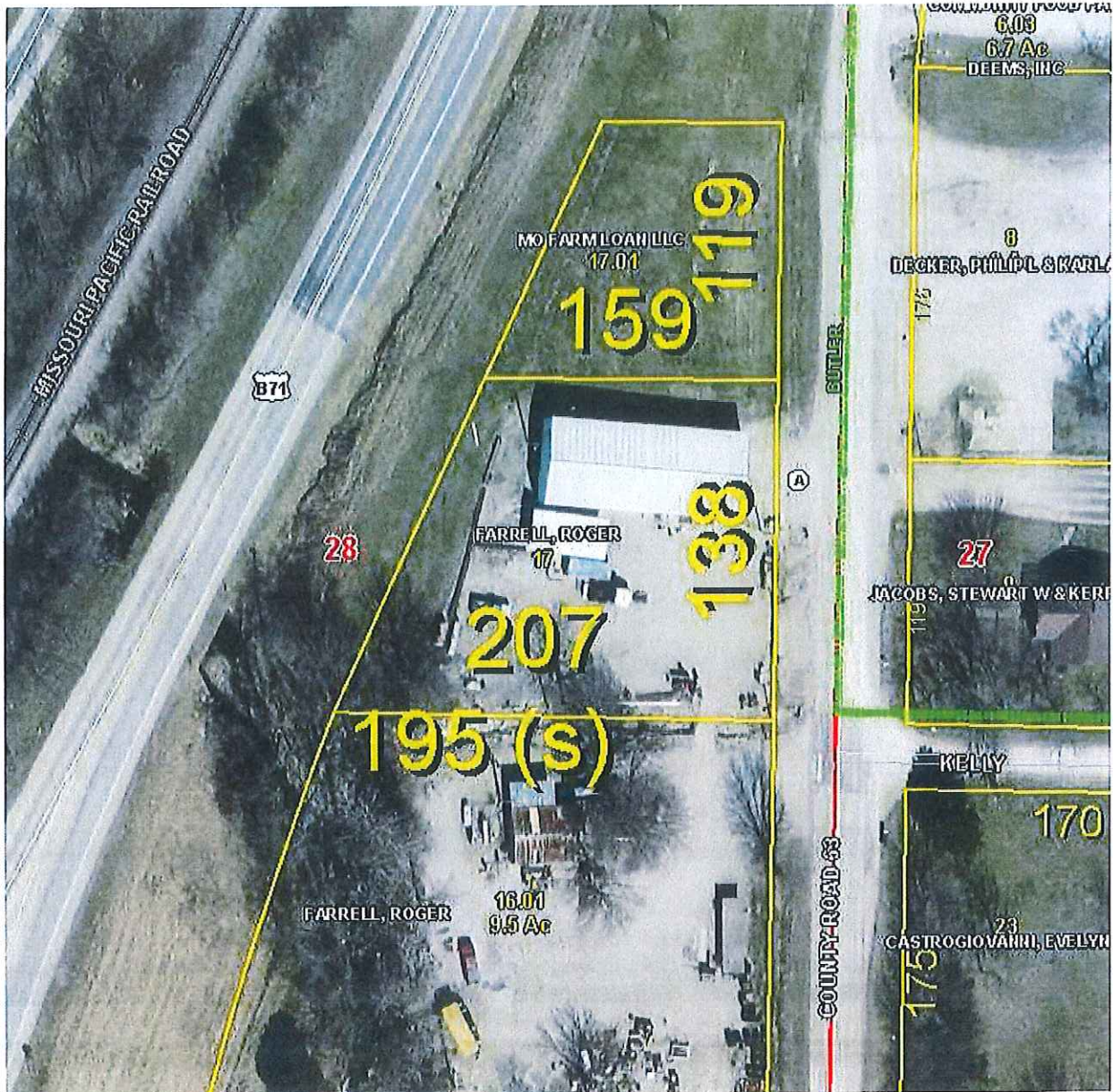
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Bates County, MO**Property Report Card****Parcel Number: 1308028000000017000**

Name: FARRELL, ROGER

Situs Address: No Situs Address

Deeded Acres: 0.00



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Form R16-C-1-1

Butler Stationery Co., Box Walnut, Kansas City, Mo.

Rec. for Recorder of Deeds

Quit-Claim Deed

This Indenture, Made on the 25th day of
February A. D., One Thousand Nine Hundred and
Eighty-Seven by and between

Connie A. Farrell

of the County of Bates, State of
Missouri part Y of the first part, and

Roger Dewayne Farrell

of the County of Bates, State of
Missouri part Y of the second part,

(Mailing address of said first named grantee is Route 4, Box 479, Butler, MO 64730).

WITNESSETH, that the said party of the first part, in consideration of the sum of
--One Dollar and other good and valuable considerations---- DOLLARS,

to her paid by the said part Y of the second part (the receipt of which is hereby acknowledged)
does by these presents REMISE, RELEASE and FOREVER QUIT CLAIM unto the said part Y
of the second part, the following described lots, tracts or parcels of land, lying, being and situate in the
County of Bates and State of Missouri, to-wit:

All that part of the East Half of the Northeast Quarter
of Section 28 in Township 40 of Range 31 lying south
and east of the right-of-way of Missouri Pacific Railway
Company as same is located through and across said land,
EXCEPT the part thereof now taken and used as old U.S.
Highway 71, and further except that part off the westerly
side of the above described tract taken for Ramp No. 2 of
the improvement of State Highway designated Route 71, and
more particularly described in Report of Commissioners dated
June 25, 1969, and recorded in the Recorder's Office of
Bates County, Missouri, in Book 451 at Page 171.
Together with mobile home located thereon.

TO HAVE AND TO HOLD THE SAME, with all the rights, immunities, privileges and appurte-
nances thereto belonging, unto the said part Y of the second part and unto his heirs and
assigns forever; so that neither the said part Y of the first part nor her heirs nor any other
person or persons, for her or in her name or behalf, shall or will hereinafter
claim or demand any right or title to the aforesaid premises or any part thereof, but they and each of
them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, the said part Y of the first part has hereunto set her
hand and seal the day and year above written.

Signed, Sealed and Delivered in Presence of x Connie A. Farrell (Seal)
Connie A. Farrell

..... (Seal)

..... (Seal)

..... (Seal)

In the State of Missouri, County of Bates, on this 25th day
of February, 1987, before me, the undersigned, a Notary Public in and for said County and State,
personally appeared Connie A. Farrell

to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she
executed the same as her free act and deed, and the said
Connie A. Farrell
herself to be unmarried.

Witness my hand and the Notarial Seal subscribed and affixed in said County and State, the day and year in this certificate



Mary Lucille Munday
Notary Public
Mary Lucille Munday

April 11

1988

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Bates County, MO**Property Report Card****Parcel Number: 1308028000000016010**

Name: FARRELL, ROGER

Mail To Address: 1492 NE COUNTY RD 63

Mail To City State Zip: BUTLER MO 64730-9452

Situs Address: No Situs Address

Legal Description: PT SE4 LYING W OF OLD 71 HWY & E OF OFF RAMP #2 NEW 71 HWY ^

Deeded Acres: 9.50

Book: 0622

Page: 0149

Market Value: \$20,600.00

Ag Appraised: \$0.00

Residential Appraised: \$7,200.00

Commercial Appraised: \$13,400.00

FCROP Appraised: \$0.00

Total Assessed: \$5,660.00

Ag Assessed: \$0.00

Residential Assessed: \$1,370.00

Commercial Assessed: \$4,290.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 06-01-1991

Sales Price: \$0.00

Source:

Last Tax Bill: \$340.03

Last Tax Bill Paid: N

Improvement Info

Structure: Barn

Year Built: 1970

Base Area: 720

Adjusted Area: 830

Class: B-42

Rooms: 001

Bedrooms: 000

Condition: 42

Improvement Value: \$3,660

AG Value: \$0

Residential Value: \$0

Commercial Value: \$3,660

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WARRANTY DEED

THIS DEED, Made and entered into this 24th day of June A. D., One Thousand Nine Hundred and
Ninety ONE, by and between Gary K. Roberts and Michelle D. Roberts, his wife,
party or parties of the first part, and

Roger D. Farrell party or parties of the second part:

(Grantee's mailing address is:) Route 4, Box 479, Butler, MO 64730

WITNESSETH, That the said party or parties of the First part, for and in consideration of the sum of ten dollars and other
valuable considerations paid by the said party or parties of the Second part, the receipt of which is hereby acknowledged, does or
do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said party or parties of the Second Part, the following
described real estate situated in the County of Bates In the State of Missouri to-wit:

All that part of the southeast quarter of Section 28,
Township 40, Range 31, lying west of right-of-way of
old U.S. Highway #71, and east of the east right-of-way
line of off ramp #2 of New U.S. Highway #71 as established
by Report of Commissioner in Book 451, Page 171, in the Office
of the Recorder of Deeds, Bates County, Missouri.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging
unto the said party or parties of the Second part, and to their heirs and assigns, forever; the said party or parties of the first part
hereby covenanting that said premises are free and clear of any incumbrances and that said party or parties and the heirs, executors,
and administrators of such party or parties shall and will warrant and defend the title to the premises, unto the said party or parties
of the second part, and to their heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party or parties of the First Part has or have hereunto set their hand or hands the day and
year first above written.

Gary K. Roberts
Gary K. Roberts

Michelle D. Roberts
Michelle D. Roberts

STATE OF MISSOURI, } ss. On this 24th day of June, 19 91
County of Bates }
before me personally appeared Gary K. Roberts, his wife
and Michelle D. Roberts
to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledge that they
executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at
my office in Butler, MO the day and year first above written.
My term expires April 27, 19 92



John L. Pursley Notary Public

STATE OF MISSOURI, } ss. On this _____ day of _____, 19 _____
County of _____ }
before me personally appeared _____

to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that they
executed the same as _____ free act and deed and the said _____ further declared _____
to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at
my office in _____ the day and year first above written.
My term expires _____, 19 _____

(SEAL) _____ Notary Public

STATE OF MISSOURI, } ss. IN THE RECORDER'S OFFICE
County of Bates }
I, Recorder of said county, do hereby certify that the within instrument of writing was, at 9 o'clock 30
minutes 11 M., on the 25th day of June A.D., 19 91, duly filed for record
in this office, and has been recorded in Book 622, page 149

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Butler
Missouri, on the day and year aforesaid.

R. L. Spivey Recorder of Deeds.
By _____ Deputy.
Page 149

Book 622

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Bates County, MO
Property Report Card

Parcel Number: 1308028000000017010

Name: MO FARM LOAN LLC

Mail To Address: PO BOX 86

Mail To City State Zip: BUTLER MO 64730-0086

Situs Address: ~

Legal Description: PT SE4 NE4 BGN 138' N OF SE/COR (METED) ^

Deeded Acres: 0.00

Book: 1042

Page: 1447

Market Value: \$4,100.00

Ag Appraised: \$0.00

Residential Appraised: \$4,100.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$780.00

Ag Assessed: \$0.00

Residential Assessed: \$780.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: MISSOURI FARM LOAN COMPANY

Date Acquired: 12-17-2019

Sales Price:

Source: O

Last Tax Bill: \$45.67

Last Tax Bill Paid: N

Improvement Info

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Bates County, MO**Property Report Card****Parcel Number: 1308028000000017010**

Name: MO FARM LOAN LLC

Situs Address: ~

Deeded Acres: 0.00



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Recorded In Bates County, Missouri



Recording Date/Time: 12/17/2019 at 03:24:43 PM

Book: 1042 Page: 1447

Instr #: 201902551

Pages: 4

Fee: \$33.00 S 20190001615



WARRANTY DEED

THIS DEED, made and entered into this 17th day of December, 2019, by and between MISSOURI FARM LOAN COMPANY, a Missouri corporation, Grantor, and MO FARM LOAN, LLC, Grantee. Grantee's mailing address is 16 North Delaware Street, Butler, Missouri 64730.

WITNESSETH, That the said Grantor, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantee, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantee the following described real estate, to-wit:

Tract 1: That part of the Southeast Quarter of the Northeast Quarter of Section 28, Township 40 North, Range 31 West of the 5th Principal Meridian in Bates County, Missouri, described as follows: Commencing at the Southeast corner of said Quarter Quarter Section; thence on an assumed bearing of North along the East line of said Quarter Quarter a distance of 138.00 feet to the point of beginning of the land to be described; thence continuing on North a distance of 159.50 feet; thence South 89 degrees 52 minutes 00 seconds West a distance of 90.00 feet; thence South 20 degrees 31 minutes 00 seconds West a distance of 170.08 feet; thence on a bearing of East a distance of 149.61 feet to the point of beginning. Subject to easement for public road off the East and subject to all easements of record.

Tract 2: The South 1 feet of the following described tract of land, to-wit: All of a tract bounded and described as follows: Beginning at a point 298.78 feet East and 665 feet North of the Southwest corner of the Northeast Quarter of the Southeast Quarter of Section 22, in Township 40, of Range 31, and running thence North 143.5 feet, thence East 140.78 feet, more or less to the West line of Conklin and Wells Addition to Butler, thence South 143.5 feet, thence West 140.78 feet, more or less to the point of beginning, exception 23.40 feet, more or less, off the North side of said tract being part of Vine Street, all in the City of Butler, Bates County, Missouri.

Tract 3: All of Lot 14 and all of Lot 13, except the West 5 feet thereof, in Block 1, of Wyatt's Addition to the City of Butler, Bates County, Missouri. ALSO, beginning 5 feet East of the Northwest corner of Lot 13, Block 1, Wyatt's Addition, running thence South 75 feet, thence East 15 feet, thence North 75 feet, thence West 15 feet to the point of beginning.

Tract 4: All of a tract bounded and described as follows: Beginning at a point on the Westerly right-of-way line of Old U.S. Highway 71 (also known as Business Route 71) where the same is intersected by a line running East and West 15 rods North of the South line of the North Half of the Southwest Quarter of Section 22, Township 40, Range 31, thence running Northeasterly, along

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000031000**

Name: TARANTO, MICHAEL P & ELIZABETH

Mail To Address: 1399 NE KELLY DR

Mail To City State Zip: BUTLER MO 64730-4531

Situs Address: No Situs Address

Legal Description: LOT 7 EVERGREEN ADD^ & N 200' OF S 682.8' OF LOT 14 & N200' OF S 682.8' OF W 50'

Deeded Acres: 0.00

Book: 0804

Page: 0099

Market Value: \$152,300.00

Ag Appraised: \$0.00

Residential Appraised: \$152,300.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$28,940.00

Ag Assessed: \$0.00

Residential Assessed: \$28,940.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner:

Date Acquired: 10-31-2003

Sales Price:

Source: O

Last Tax Bill: \$1,694.76

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1983

Base Area: 1597

Adjusted Area: 3019

Class: H/D+

Rooms: 5½

Bedrooms: 2½

Condition: 77

Improvement Value: \$132,300

AG Value: \$0

Residential Value: \$132,300

Commercial Value: \$0

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**Bates County, MO
Property Report Card****Parcel Number: 1308027000000031000**

Name: TARANTO, MICHAEL P & ELIZABETH

Situs Address: No Situs Address

Deeded Acres: 0.00



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FILE RECORD

ENTERED BOOK NO. 804 PAGE 99
COMPARED _____ INDEX 514

COMPARED _____ INDEX 5/4

mc: p
E: R

 $\mathbb{C}:\mathbb{R}$

27.

27.



SEAL

BATES COUNTY, MO

STATE OF MISSOURI } ss IN THE RECORDERS OFFICE
County of Bates }

Lucille Munday, Recorder of said county, does hereby certify that the within instrument of writing was on the 31 day of October A.D. 20 03 duly filed for record in this office at 1 o'clock 48 minutes P M and is recorded in the records of this office in Book 804 on Page 99

Lucille Munday, Recorder of said county, does hereby certify that the within instrument of writing was on the 31 day of October A.D. 20 03 duly filed for record in this office at 1 o'clock 48 minutes P M and is recorded in the records of this office in Book 804 on Page 99

In Witness Whereof, I have hereunto set my hand
and affixed my official seal at office in Butler, Missouri
this 31 day of October, A.D. 2003

By Lucy Mundy Recorder
Deputy.

WARRANTY DEED

THIS DEED, made and entered into this 31st day of October, 2003, by and between KEVIN UMSTATTD and KRISTY A. UMSTATTD, husband and wife, Grantors, and MICHAEL P. TARANTO and ELIZABETH TARANTO, husband and wife, Grantees. Grantees' mailing address is 108 Kelly Drive, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate situate in the County of Bates, in the State of Missouri, to-wit:

All of Lot 7 of Evergreen Estates, a subdivision of Bates County, Missouri, as shown in Plat shown in Bates County Recorder of Deeds, Plat Book 4, Page 11.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.

KEVIN UMSTATTD

KRISTY A. UNSTATTD

STATE OF MISSOURI)
)ss
COUNTY OF BATES)

)SS

COUNTY OF BATES)

On this 31st day of October, 2003, before me personally appeared KEVIN UMSTATTD and KRISTY A. UMSTATTD, husband and wife, to me known to be the persons who executed the foregoing Warranty Deed and acknowledged to me that they executed the same as their free act and deed.

BOOK 804

PAGE 99

Bates County, MO
Property Report Card**Parcel Number: 1308027000000025000**

Name: MULLINS, MELODY & DANIEL BRENT

Mail To Address: 2 CIR DR

Mail To City State Zip: BUTLER MO 64730-9467

Situs Address: No Situs Address

Legal Description: LOT 4 EVERGREEN ADDN^

Deeded Acres: 0.00

Book: 1003

Page: 0141

Market Value: \$135,700.00

Ag Appraised: \$0.00

Residential Appraised: \$135,700.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$25,780.00

Ag Assessed: \$0.00

Residential Assessed: \$25,780.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: SCHOWENGERDT, MELODY & MULLINS

Date Acquired: 07-22-2016

Sales Price:

Source: O

Last Tax Bill: \$1,509.70

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1988

Base Area: 1667

Adjusted Area: 2808

Class: H/D+

Rooms: 8ýý

Bedrooms: 4ýý

Condition: 83

Improvement Value: \$126,350

AG Value: \$0

Residential Value: \$126,350

Commercial Value: \$0

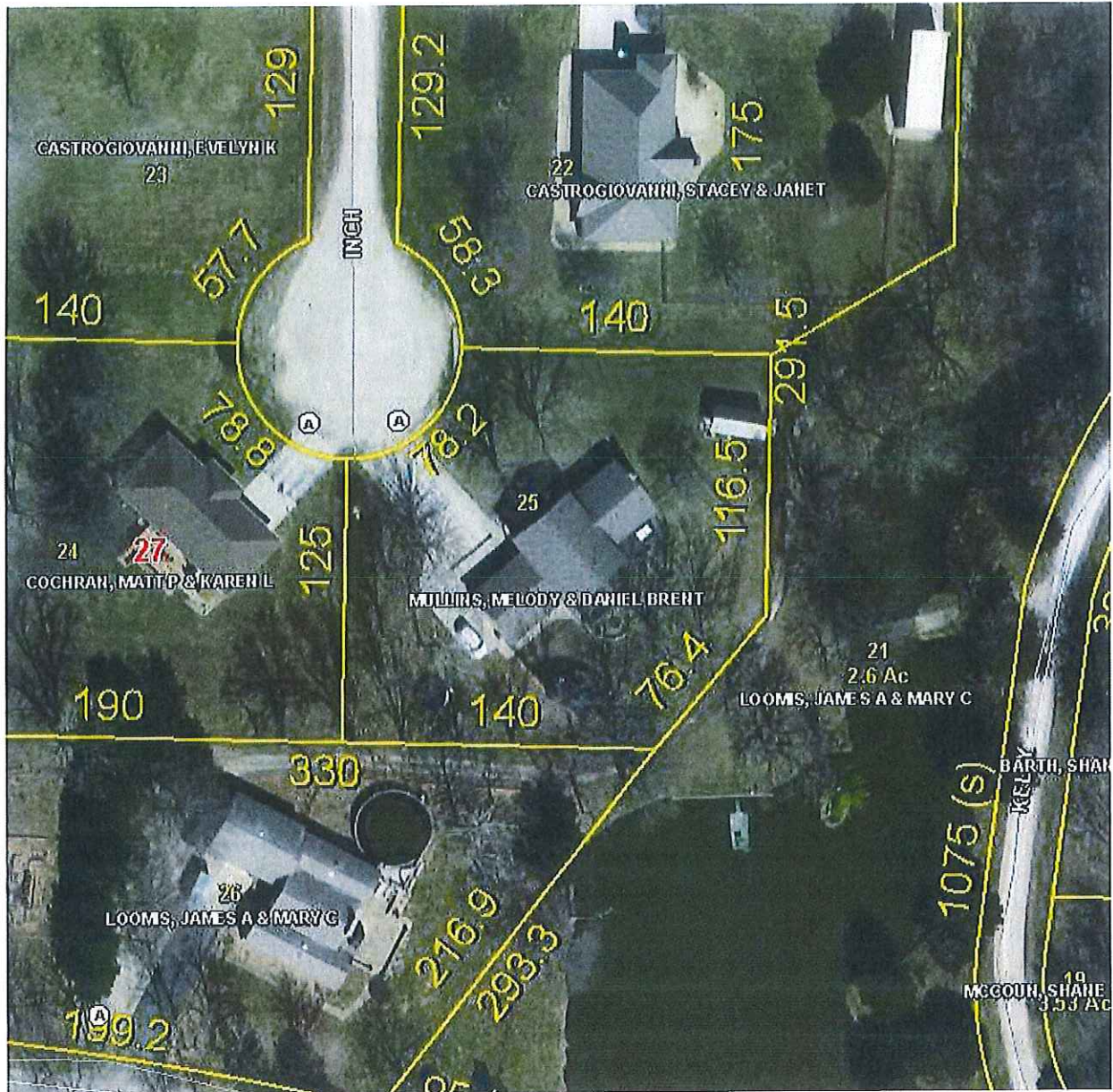
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**Bates County, MO
Property Report Card****Parcel Number: 1308027000000025000**

Name: MULLINS, MELODY & DANIEL BRENT

Situs Address: No Situs Address

Deeded Acres: 0.00



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FILE RECORD

ENTERED BOOK NO. 1003 PAGE 141
 COMPARED _____ INDEX M/J

MCNABB, PURSLEY & ASSOCIATES
 1 NORTH MAIN
 BUTLER, MO 64730



STATE OF MISSOURI, BATES COUNTY, SS
 LUCILLE MUNDEY, RECORDER OF DEEDS

Book: 1003 Page: 141

Receipt #: 83540
 Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 7/22/2016 10:48:00 AM

CTR
2
27

WARRANTY DEED

THIS DEED, made and entered into this 22 day of July, 2016, by and between MELODY MULLINS and DANIEL BRENT MULLINS, wife and husband, Grantors, and MELODY MULLINS and DANIEL BRENT MULLINS, wife and husband, Grantees. Grantees' mailing address is 2 Circle Drive, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, does by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees, the following described real estate, to-wit:

All of Lot 4 in Evergreen, a Subdivision in Bates County, Missouri. Subject to easements, reservations, and restrictions of record.

Grantors warrant that MELODY MULLINS and MELODY SCHOWENGERDT are one and the same person.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors has hereunto set their hand the day and year first above written.

Melody Mullins
 MELODY MULLINS

Daniel Brent Mullins
 DANIEL BRENT MULLINS

Bates County, MO
Property Report Card

20

Parcel Number: 1308027000000032000

Name: HEDRICK, CHANCE PAGE & SHANYA-

Mail To Address: 207 N LYON ST

Mail To City State Zip: BUTLER MO 64730-2184

Situs Address: No Situs Address

Legal Description: LOT 8 EVERGREEN ADDN^AND COMM AT SE COR LOT 12 TH N 330.30' FOR TRUE P

Deeded Acres: 1.29

Book: 1011

Page: 0120

Market Value: \$115,600.00

Ag Appraised: \$0.00

Residential Appraised: \$115,600.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$21,960.00

Ag Assessed: \$0.00

Residential Assessed: \$21,960.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: WELLS FARGO BANK NA

Date Acquired: 03-07-2017

Sales Price:

Source: O

Last Tax Bill: \$1,286.00

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Year Built: 1984

Base Area: 1506

Adjusted Area: 2201

Class: H/D+

Rooms: 007

Bedrooms: 003

Condition: 87

Improvement Value: \$107,670

AG Value: \$0

Residential Value: \$107,670

Commercial Value: \$0

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Bates County, MO**Property Report Card****Parcel Number: 1308027000000032000**

Name: VERMILLION, WAYNE & JENNY

Situs Address: No Situs Address

Deeded Acres: 1.29



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Recorded in Bates County, Missouri

Recording Date/Time: 01/03/2022 at 02:28:58 PM

Book: 1046 Page: 646

Instr #: 202200020

Pages: 2

Fee: \$27.00 S

Electronically Recorded

Danyelle Baker
Recorder of Deeds

WARRANTY DEED

THIS DEED, made and entered into this 3rd day of January, 2022, by and between CHANCE PAGE HEDRICK and SHANYA-MARIE ZOYA HEDRICK, husband and wife, Grantors, and WAYNE VERMILLION and JENNY VERMILLION, husband and wife, Grantees. Grantees' mailing address is P. O. Box 196, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

Tract 1

All of Lot 8, Evergreen Estates, a Subdivision in the City of Butler, Bates County, Missouri.

Tract 2

That part of the Southwest Quarter of Section 27, Township 40 North, Range 31 West of the 5th Principal Meridian in Bates County, Missouri, described as follows: Commencing at the Southeast corner of Lot 12 in Evergreen, a subdivision in said Bates County, Missouri; thence on an Evergreen Subdivision Plat bearing of North 06 degrees 25 minutes 00 seconds West along the East line of said Evergreen Subdivision a distance of 330.30 feet to the Southeast corner of Lot 8 in said Evergreen Subdivision for the true point of beginning of the land to be described; thence continuing North 06 degrees 25 minutes 00 seconds West along the East line of said Evergreen Subdivision 152.50 feet to the Southeast corner of Lot 7 in said Evergreen Subdivision thence North 83 degrees 56 minutes 00 seconds East a distance of 194.80 feet; thence South 06 degrees 25 minutes 00 seconds East a distance of 152.50 feet; thence South 83 degrees 56 minutes 00 seconds West a distance of 194.80 feet to the true point of beginning (otherwise described as the North 152.50 feet of the South 482.80 feet of Lot 14 of Evergreen and the North 152.50 feet of the South 482.50 feet of the West 50 feet of the East 494.00 feet of the Northwest Quarter of said Southwest Quarter).

Together with the right to share in the use of mutual non-exclusive easement for ingress and egress as recorded in Book 804 at Page 102 and Book 914 at page 193, in the Office of Recorder of Deeds of Bates County, Missouri.

Except and Subject to easements, restrictions and assessments of record, and all the taxes and assessments that may be levied, imposed or become payable hereafter.

Bates County, MO
Property Report Card**Parcel Number: 1308027000000020000**

Name: BARTH, SHANNON BD

Mail To Address: 1461 NE KELLY DR

Mail To City State Zip: BUTLER MO 64730-4532

Situs Address: No Situs Address

Legal Description: ALL LOT 6 LYING S & E KELLY DRIVE EVERGREEN ADD^

Deeded Acres: 0.00

Book: 1005

Page: 189ü

Market Value: \$101,200.00

Ag Appraised: \$0.00

Residential Appraised: \$101,200.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$19,230.00

Ag Assessed: \$0.00

Residential Assessed: \$19,230.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: TOWNLEY, CURTIS & PENNY

Date Acquired: 09-23-2016

Sales Price:

Source: O

Last Tax Bill: \$1,126.12

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Year Built: 1978

Base Area: 1179

Adjusted Area: 2028

Class: H/D

Rooms: 7ýý

Bedrooms: 3ýý

Condition: 83

Improvement Value: \$90,370

AG Value: \$0

Residential Value: \$90,370

Commercial Value: \$0

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Bates County, MO

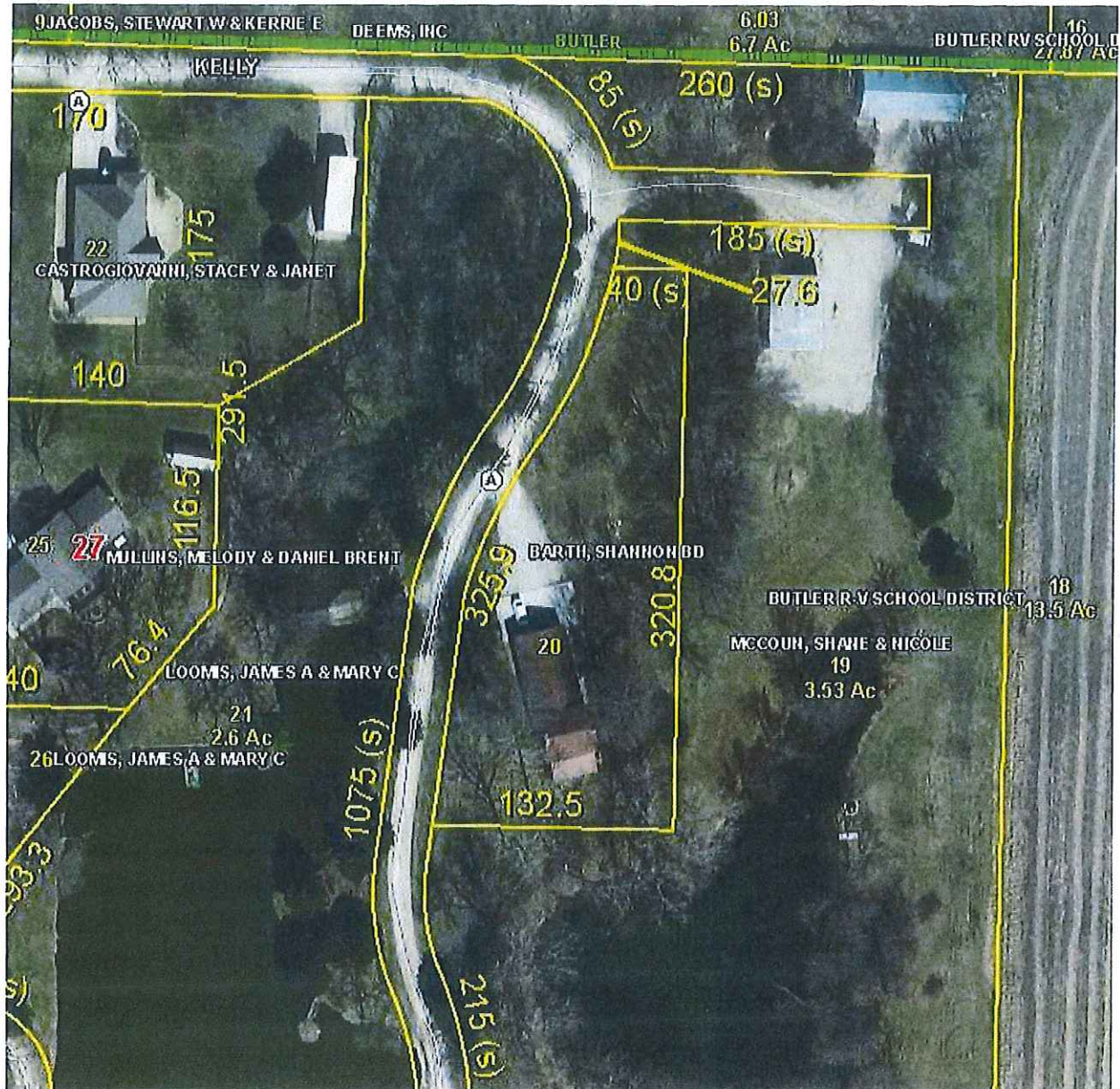
Property Report Card

Parcel Number: 1308027000000020000

Name: BARTH, SHANNON BD

Situs Address: No Situs Address

Deeded Acres: 0.00



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FILE RECORD

ENTERED BOOK NO. 1005 PAGE 189
COMPARED _____ INDEX M/LMCNABB, PURSLEY & ASSOCIATES
1 NORTH MAIN
BUTLER, MO 64730STATE OF MISSOURI, BATES COUNTY, SS
LUCILLE MUNDAY, RECORDER OF DEEDS

Book: 1005 Page: 189

Receipt #: 94323
Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 9/23/2016 1:51:00 PM

²
27# 19762

WARRANTY DEED

THIS DEED, made and entered into this 23rd day of September, 2016, by and between CURTIS TOWNLEY and PENNY TOWNLEY, husband and wife, Grantors, and SHANNON BARTH, Grantee. Grantee's mailing address is 805 Gregory Boulevard, Butler, Missouri 64730.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantee, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantee the following described real estate, to-wit:

All of a tract bounded and described as follows: Beginning at the Northwest corner of the Northwest Quarter of the Southwest Quarter, and running thence North 83 degrees 56 minutes East, and along the North line of Quarter Quarter Section, a distance of 681.2 feet, thence South 6 degrees 25 minutes East a distance of 107.6 feet to the true point of beginning, thence running South 6 degrees 25 minutes East a distance of 320.8 feet, thence South 83 degrees 56 minutes West a distance of 132.5 feet, thence North 3 degrees 45 minutes East a distance of 325.9 feet, thence North 83 degrees 56 minutes East a distance of 75.9 feet to the point of beginning, all of the above tract being in Section 27, in Township 40 of Range 31. Otherwise known and described as Lot Six (6) of Evergreen Subdivision in Bates County, Missouri as shown by Plat Book 4, Page 11, Bates County Recorder's Office. Subject to covenants, conditions, restrictions and easements of record.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantee and to her heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantee, and to the heirs and assigns of such party forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.

Curtis Townley
CURTIS TOWNLEY

Penny Townley
PENNY TOWNLEY

Bates County, MO
Property Report Card**Parcel Number: 1308027000000026000**

Name: LOOMIS, JAMES A & MARY C

Mail To Address: 8103 HASKINS ST

Mail To City State Zip: LENEXA KS 66215-2536

Situation Address: No Situation Address

Legal Description: LOT 16 EVERGREEN ADD.^

Deeded Acres: 0.00

Book: 1042

Page: 1342

Market Value: \$141,400.00

Ag Appraised: \$0.00

Residential Appraised: \$141,400.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$26,870.00

Ag Assessed: \$0.00

Residential Assessed: \$26,870.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: MILLER, STEPHEN L & TALIA M

Date Acquired: 12-03-2019

Sales Price:

Source: O

Last Tax Bill: \$1,573.53

Last Tax Bill Paid: N

Improvement Info

Structure: Residential

Year Built: 1980

Base Area: 2179

Adjusted Area: 3249

Class: H/D+

Rooms: 6ýý

Bedrooms: 3ýý

Condition: 74

Improvement Value: \$126,620

AG Value: \$0

Residential Value: \$126,620

Commercial Value: \$0

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**Bates County, MO
Property Report Card****Parcel Number: 1308027000000026000**

Name: LOOMIS, JAMES A & MARY C

Situs Address: No Situs Address

Deeded Acres: 0.00



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Recorded in Bates County, Missouri



Recording Date/Time: 12/03/2019 at 02:30:42 PM

Book: 1042 Page: 1342

Instr #: 201902446

Pages: 2

Fee: \$27.00 \$ 20190001496

Danyella Baker
Recorder of Deeds

WARRANTY DEED

THIS DEED, made and entered into this 3rd day of December, 2019, by and between STEPHEN L. MILLER and TALIA M. MILLER, husband and wife, **Grantors**, and JAMES A. LOOMIS and MARY C. LOOMIS, husband and wife, **Grantees**. Grantees' mailing address is 8103 Haskins Street, Lenexa, Kansas 66215.

WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

TRACT I: Lot 16, Evergreen, a subdivision in Butler, Bates County, Missouri. Subject to restrictions, reservations, and easements of record, if any.

TRACT II: All of Lot 5, in Evergreen Estates, a subdivision of Bates County, Missouri, as shown in Plat Book 4, Page 11 in Deed Records of Bates County, Missouri. EXCEPT a tract described as follows: Commencing at the Northeast corner of Lot 1 for the point of beginning of the land to be described; thence on a plat bearing of North 83 degrees 56 minutes 00 seconds East a distance of 75.00 feet; thence South 06 degrees 25 minutes 00 seconds East a distance of 125.00 feet; thence South 50 degrees 08 minutes 06 seconds West a distance of 89.88 feet to the Southwest corner of said Lot 1; thence North 06 degrees 25 minutes 00 seconds West a distance of 175.00 feet to the point of beginning.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.


STEPHEN L. MILLER


TALIA M. MILLER

226

**Bates County, MO
Property Report Card****Parcel Number: 1308027000000021000****Name:** LOOMIS, JAMES A & MARY C**Mail To Address:** 70 NE CEDAR DR**Mail To City State Zip:** BUTLER MO 64730-2222**Situs Address:** No Situs Address**Legal Description:** ALL LOT 5 & PT LOT 6 LYING W KELLY DRIVE EVERGREEN ADD^EXC PART OF LO**Deeded Acres:** 2.60**Book:** 1042**Page:** 1342**Market Value:** \$4,700.00**Ag Appraised:** \$0.00**Residential Appraised:** \$4,700.00**Commercial Appraised:** \$0.00**FCROP Appraised:** \$0.00**Total Assessed:** \$890.00**Ag Assessed:** \$0.00**Residential Assessed:** \$890.00**Commercial Assessed:** \$0.00**FCROP Assessed:** \$0.00**Previous Owner:** MILLER, STEPHEN L & TALIA M**Date Acquired:** 12-03-2019**Sales Price:****Source:** O**Last Tax Bill:** \$52.13**Last Tax Bill Paid:** Y**Improvement Info**

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Bates County, MO

Property Report Card

Parcel Number: 1308027000000021000



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Recorded in Bates County, Missouri



Recording Date/Time: 12/03/2019 at 02:30:42 PM

Book: 1042 Page: 1342

Instr #: 201902446

Pages: 2

Fee: \$27.00 \$ 20190001496

Danyelle Baker
Recorder of Deeds

WARRANTY DEED

THIS DEED, made and entered into this 3rd day of December, 2019, by and between STEPHEN L. MILLER and TALIA M. MILLER, husband and wife, Grantors, and JAMES A. LOOMIS and MARY C. LOOMIS, husband and wife, Grantees. Grantees' mailing address is 8103 Haskins Street, Lenexa, Kansas 66215.

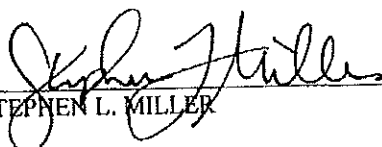
WITNESSETH, That the said Grantors, for and in consideration of the sum of Ten Dollars and Other Valuable Considerations paid by the said Grantees, the receipt of which is hereby acknowledged, do by these presents Grant, Bargain and Sell, Convey and Confirm, unto the said Grantees the following described real estate, to-wit:

TRACT I: Lot 16, Evergreen, a subdivision in Butler, Bates County, Missouri. Subject to restrictions, reservations, and easements of record, if any.

TRACT II: All of Lot 5, in Evergreen Estates, a subdivision of Bates County, Missouri, as shown in Plat Book 4, Page 11 in Deed Records of Bates County, Missouri. EXCEPT a tract described as follows: Commencing at the Northeast corner of Lot 1 for the point of beginning of the land to be described; thence on a plat bearing of North 83 degrees 56 minutes 00 seconds East a distance of 75.00 feet; thence South 06 degrees 25 minutes 00 seconds East a distance of 125.00 feet; thence South 50 degrees 08 minutes 06 seconds West a distance of 89.88 feet to the Southwest corner of said Lot 1; thence North 06 degrees 25 minutes 00 seconds West a distance of 175.00 feet to the point of beginning.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto the said Grantees and to their heirs and assigns, forever; the said Grantors hereby covenanting that said premises are free and clear of any incumbrances and that said Grantors and the heirs, executors, and administrators of such Grantors shall and will warrant and defend the title to the premises, unto the said Grantees, and to the heirs and assigns of such parties forever, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.


STEPHEN L. MILLER


TALIA M. MILLER

Bates County, MO
Property Report Card**Parcel Number: 1308027000000024000**

Name: COCHRAN, MATT P & KAREN L

Mail To Address: 48 NE INCH CIR

Mail To City State Zip: BUTLER MO 64730-4530

Situs Address: No Situs Address

Legal Description: LOT 3 EVERGREEN ADD^

Deeded Acres: 0.00

Book: 0720

Page: 0046

Market Value: \$82,600.00

Ag Appraised: \$0.00

Residential Appraised: \$82,600.00

Commercial Appraised: \$0.00

FCROP Appraised: \$0.00

Total Assessed: \$15,690.00

Ag Assessed: \$0.00

Residential Assessed: \$15,690.00

Commercial Assessed: \$0.00

FCROP Assessed: \$0.00

Previous Owner: CANTRELL, TERESA L

Date Acquired: 05-24-1999

Sales Price:

Source: O

Last Tax Bill: \$918.83

Last Tax Bill Paided: N

Improvement Info

Structure: Residential

Year Built: 1985

Base Area: 1320

Adjusted Area: 1633

Class: H/D

Rooms: 6yy

Bedrooms: 3yy

Condition: 88

Improvement Value: \$72,760

AG Value: \$0

Residential Value: \$72,760

Commercial Value: \$0

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GENERAL WARRANTY DEED (Individual)

This Deed, Made and entered into this 24th day of May, 1999, by and between Teresa L. Cantrell, A Single Woman of the County of Bates, State of Missouri, party or parties of the first part, and Matt P. Cochran and Karen L. Cochran, Husband and Wife of the County of Henry, State of Missouri party or parties of the second part.

Grantees Mailing Address: RT 4, Box 486, Butler Mo 64730

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of One Dollar and other valuable considerations paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, does or do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said party or parties of the second part, the following described Real Estate, situated in the County of Bates and State of Missouri, to-wit:

All of Lot 3 of Evergreen, a subdivision in Bates County, Missouri, as shown in plat, recorded in Plat Book 4, Page 11, Deed Records of Bates County, Missouri, EXCEPT for easements of record.

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said party or parties of the second part, and to the heirs and assigns of such party or parties forever.

The said party or parties of the first part hereby covenanting that said party or parties and the heirs, executors, administrators and assigns of such party or parties, shall and will WARRANT AND DEFEND the title to the premises unto the said party or parties of the second part, and to the heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever, excepting, however, the general taxes for the calendar year 1999 and thereafter, and special taxes becoming a lien after the date of this deed.

IN WITNESS WHEREOF, the said party or parties of the first part has or have hereunto set their hand or hands the day and year first above written.

X Teresa L. Cantrell (SEAL)
Teresa L. Cantrell

_____. (SEAL)

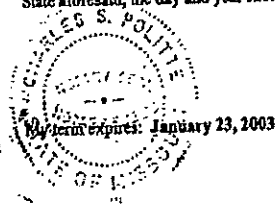
STATE OF MISSOURI
County of Bates

} ss. On this 24th day of May, 1999.

before me personally appeared Teresa L. Cantrell, a single person to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Grantor herein, Teresa L. Cantrell further declares herself to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in Butler the County and State aforesaid, the day and year first above written.

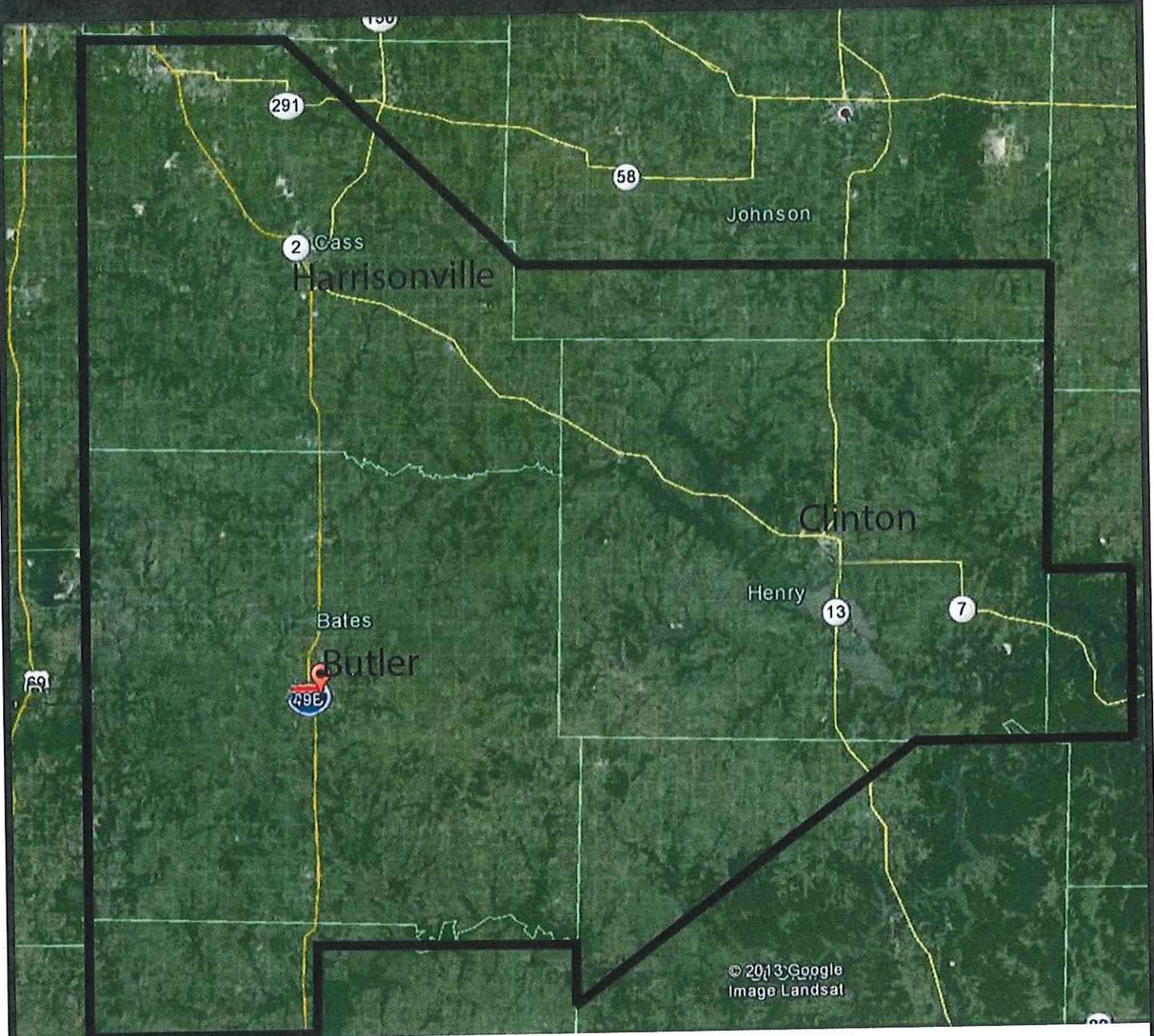


Charles S. Politt
Charles S. Politt, Notary Public.

EXHIBIT 4

The following is a map of the Cooperative's current service territory. Pursuant to this Territorial Agreement, the Cooperative's electric service area shall be this map referenced in Exhibit 4, EXCLUDING the property and territory referenced in Exhibit 1 (the City's corporate boundaries) and Exhibits 2 and 3 (the property and territory being added to the City's electric service area pursuant to this Territorial Agreement)

Osage Valley Electric Cooperative Service Territory



Osage Valley Electric Cooperative is a member-owned rural electric utility providing service in Bates, Cass, Henry, Johnson, Benton, St. Clair and Vernon Counties.



EXHIBIT 5

The following is a property report, map, and deed for the property, located outside of the City's corporate boundaries and within the Cooperative's service territory that the City is representing and warranting that Cooperative shall continue to be the electric supplier of regardless of whether the City annexes it in the future.

**Bates County, MO
Property Report Card****Parcel Number: 13060130000000004000****Name: CASKEY, DORENDA K BD****Mail To Address: PO BOX 45****Mail To City State Zip: BUTLER MO 64730-0045****Situs Address: No Situs Address****Legal Description: W 1/2 SW 1/4 (EXC TR BGN 30' E OF SW COR) & S 1/2 SW 1/4 NW 1/4 (EXC N^208.7' W 4****Deeded Acres: 78.00****Book: 1011****Page: 0180****Market Value: \$13,100.00****Ag Appraised: \$13,100.00****Residential Appraised: \$0.00****Commercial Appraised: \$0.00****FCROP Appraised: \$0.00****Total Assessed: \$1,570.00****Ag Assessed: \$1,570.00****Residential Assessed: \$0.00****Commercial Assessed: \$0.00****FCROP Assessed: \$0.00****Previous Owner: CASKEY, DORENDA K****Date Acquired: 03-14-2017****Sales Price:****Source: O****Last Tax Bill: \$91.95****Last Tax Bill Paid: Y****Improvement Info**

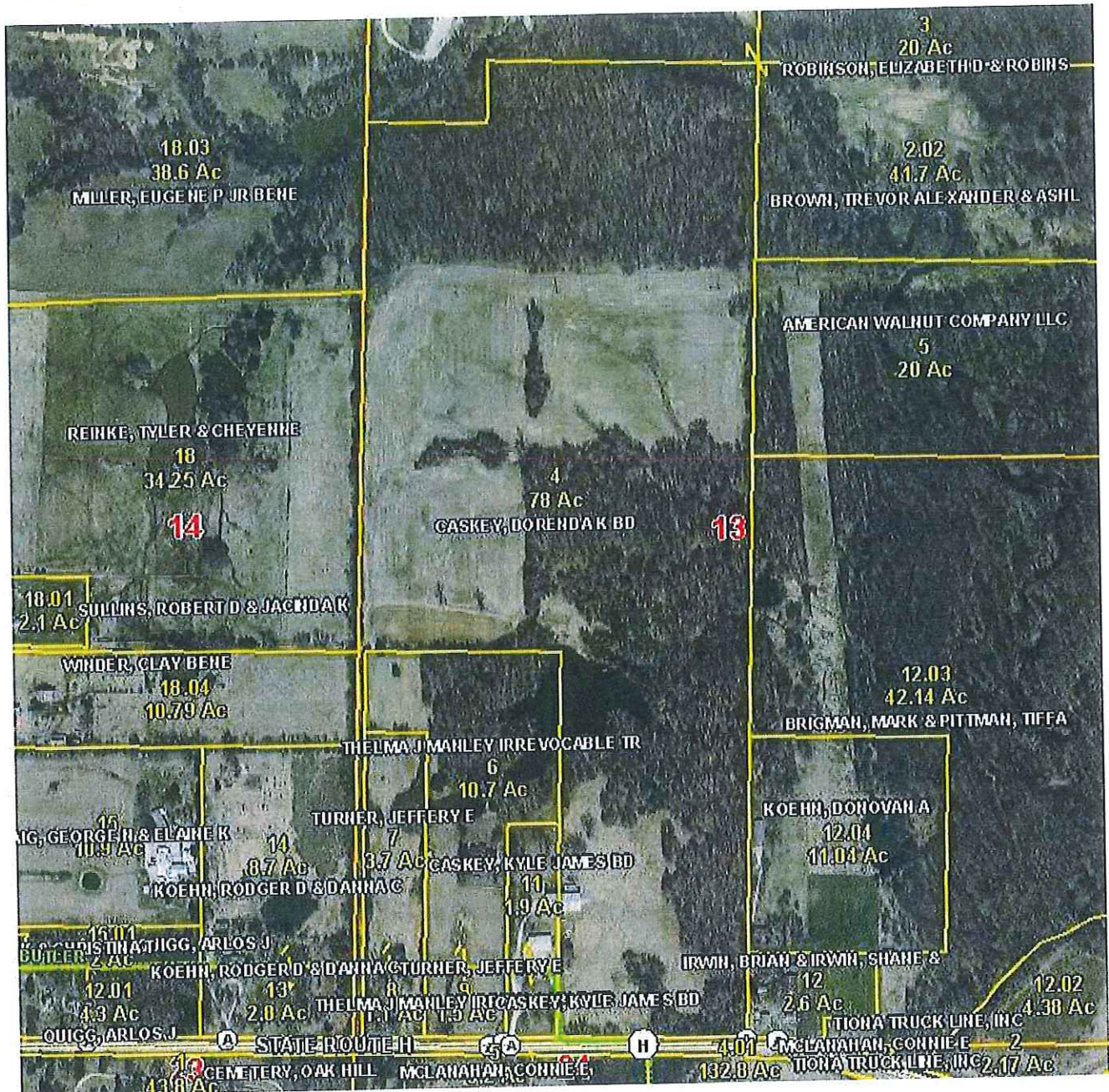
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**Bates County, MO
Property Report Card****Parcel Number: 1306013000000004000**

Name: CASKEY, DORENDA K BD

Situs Address: No Situs Address

Deeded Acres: 78.00



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FILE RECORD

ENTERED BOOK NO. 1011 PAGE 180COMPARED _____ INDEX JLCASKEY EDUCATIONAL & PARALEGAL SERVICE
8 N DELAWARE
P.O. BOX 406
BUTLER, MO 64730STATE OF MISSOURI, BATES COUNTY, SS
LUCILLE MUNDY, RECORDER OF DEEDS

Book: 1011 Page: 180

Receipt #: 98263
Pages Recorded: 2

Recording Fee: \$27.00

Date Recorded: 3/14/2017 2:57:00 PM

2
27 #1117

BENEFICIARY DEED

THIS DEED, made this 14 day of March, 2017, wherein OWNER-GRANTOR, DORENDA K. CASKEY a/k/a KAY CASKEY, a single person of PO Box 45, Butler, Missouri 64730, without consideration does by these presents GRANT AND ASSIGN, CONVEY AND CONFIRM unto GRANTEE BENEFICIARY named as follows:

Kyle J. Caskey, and his lineal descendants per stirpes.

the following described real estate, situated in the County of Bates, State of Missouri, to-wit:

The South 15 2/3 feet of the North 21 feet of the South 1/3 of Lot 3 in Block 10 in the Original Town of Butler, Missouri.

A tract of land described as beginning at a point 19 feet 8 inches North of the Southeast corner of Lot Three (3), Block Ten (10), in the Original Town of Butler, running thence North 15 feet 8 inches, thence West 100 feet to an alley in the rear of said Block, thence South 15 feet 8 inches, thence East to the point of beginning, all in the City of Butler, Missouri.

Three (3) feet off the South side of Lot One (1) and Twenty (20) feet off the North side of Lot Two (2) all in Block Ten (10) of the Original Town, now City of Butler, Missouri.

The South 100 feet of the West 60 feet of Lot 6, Block 2, Montgomery's 3rd Addition to the City of Butler, Missouri.

The West Half of the Southwest Quarter, except a tract bounded and described as follows: Beginning 30 feet East of the Southwest corner of the said West Half of the Southwest Quarter, and running thence North 1320 feet, thence East 660 feet, thence South 1320 feet, thence West 660 feet to the point of beginning.

Also, the South Half of the Southwest Quarter of the Northwest Quarter except therefrom a tract bounded and described as follows: Beginning at the Northwest corner of the said South Half of the Southwest Quarter of the Northwest Quarter and running thence East 417.4 feet, thence South 208.7 feet, thence West 417.4 feet, thence North 208.7 feet to the place of beginning, all of the above described land being in Section 13, Township 40 of Range 31.

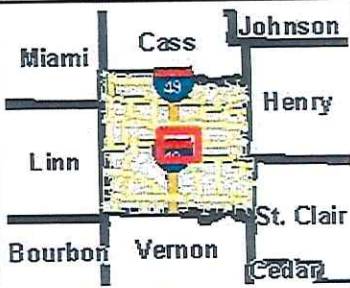
My undivided one-half interest to: The Northeast Quarter of the Southwest Quarter and 31 acres off the South side of the Southeast Quarter of the Northwest Quarter of Section 31, Township 40, Range 31, Except a strip containing 1/2 acre lying along the South side of the cemetery, said strip being in the Northwest corner of said 31 acres; also 4 acres lying East and adjoining the cemetery and being in the Northeast corner of the Southeast Quarter of the Northwest Quarter of Section 31 Township 40, Range 31.

Dorenda K. Caskey was continuously married to Harold L. Caskey until his date of death on October 1, 2015, having never been divorced.

EXHIBIT I - Amended

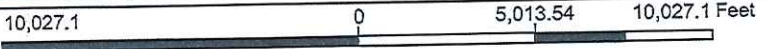
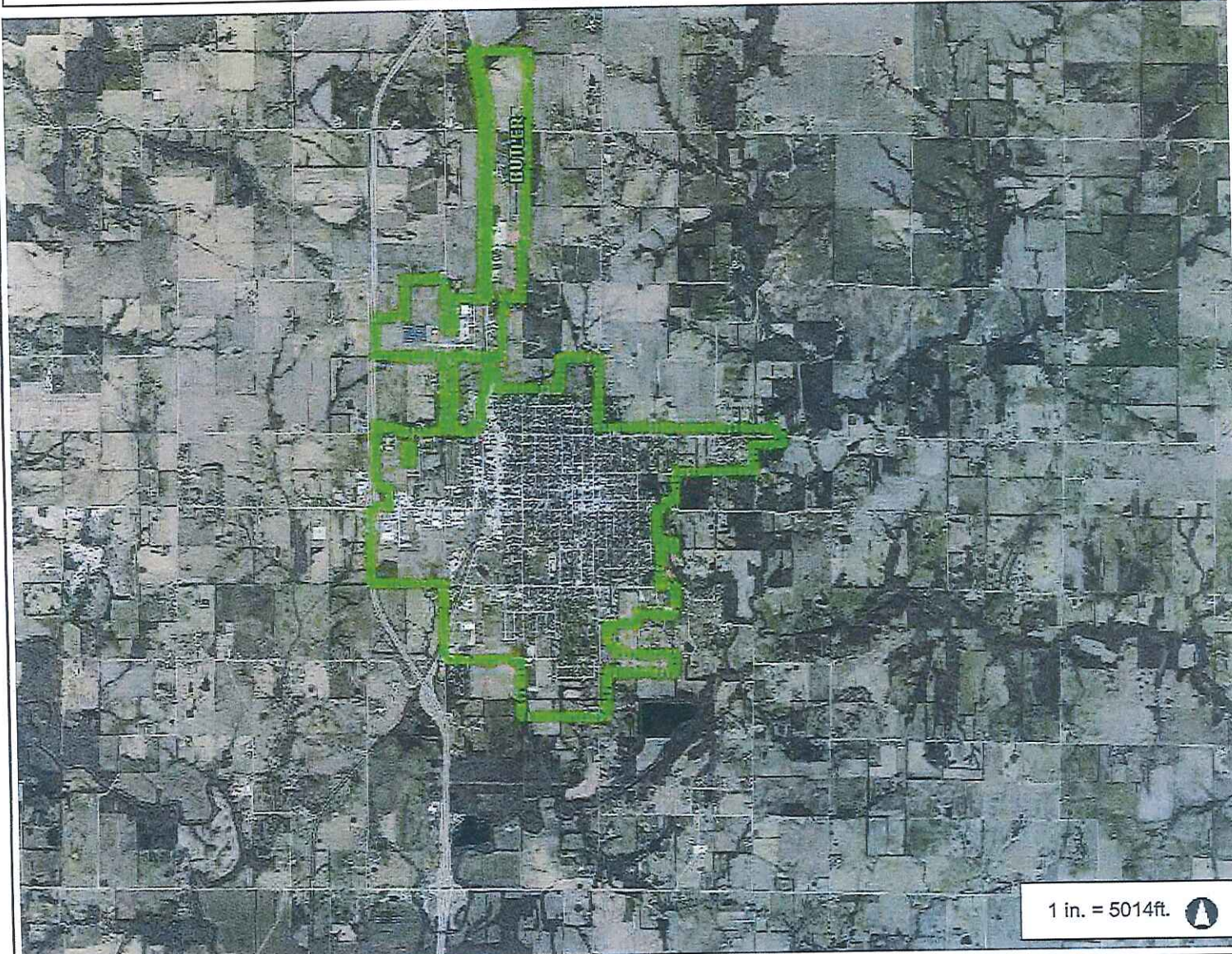
The following are maps of the corporate boundaries for the City of Butler, representing the current electrical service area of the City not including the properties to be added pursuant to this Territorial Agreement.

Bates County, MO



Legend
Corporate Limit Line

Notes

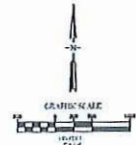


1 in. = 5014ft.

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

CITY OF BUTLER, MISSOURI
ZONING MAP

LEGEND	
CITY LIMIT LINE	---
SECTION LINE	---
SECTION NUMBER	① 360
ROAD & STREET NAME	---
RAILROAD NAME	NS & NORTHWEST AVE, RAILROAD
STATE HIGHWAY	② ③ ④
STREET NUMBER	100 200
AGRICULTURAL A-1	Yellow
RECREATIONAL R-1	Light Green
RECREATIONAL R-2	Light Blue
RECREATIONAL R-3	Light Green
AGRICULTURAL A-1	Light Green
AGRICULTURAL A-2	Light Green
AGRICULTURAL A-3	Light Green
AGRICULTURAL A-4	Light Green
AGRICULTURAL A-5	Light Green
AGRICULTURAL A-6	Light Green
AGRICULTURAL A-7	Light Green
AGRICULTURAL A-8	Light Green
AGRICULTURAL A-9	Light Green
AGRICULTURAL A-10	Light Green
AGRICULTURAL A-11	Light Green
AGRICULTURAL A-12	Light Green
AGRICULTURAL A-13	Light Green
AGRICULTURAL A-14	Light Green
AGRICULTURAL A-15	Light Green
AGRICULTURAL A-16	Light Green
AGRICULTURAL A-17	Light Green
AGRICULTURAL A-18	Light Green
AGRICULTURAL A-19	Light Green
AGRICULTURAL A-20	Light Green
AGRICULTURAL A-21	Light Green
AGRICULTURAL A-22	Light Green
AGRICULTURAL A-23	Light Green
AGRICULTURAL A-24	Light Green
AGRICULTURAL A-25	Light Green
AGRICULTURAL A-26	Light Green
AGRICULTURAL A-27	Light Green
AGRICULTURAL A-28	Light Green
AGRICULTURAL A-29	Light Green
AGRICULTURAL A-30	Light Green
AGRICULTURAL A-31	Light Green
AGRICULTURAL A-32	Light Green
AGRICULTURAL A-33	Light Green
AGRICULTURAL A-34	Light Green
AGRICULTURAL A-35	Light Green
AGRICULTURAL A-36	Light Green
AGRICULTURAL A-37	Light Green
AGRICULTURAL A-38	Light Green
AGRICULTURAL A-39	Light Green
AGRICULTURAL A-40	Light Green
AGRICULTURAL A-41	Light Green
AGRICULTURAL A-42	Light Green
AGRICULTURAL A-43	Light Green
AGRICULTURAL A-44	Light Green
AGRICULTURAL A-45	Light Green
AGRICULTURAL A-46	Light Green
AGRICULTURAL A-47	Light Green
AGRICULTURAL A-48	Light Green
AGRICULTURAL A-49	Light Green
AGRICULTURAL A-50	Light Green
AGRICULTURAL A-51	Light Green
AGRICULTURAL A-52	Light Green
AGRICULTURAL A-53	Light Green
AGRICULTURAL A-54	Light Green
AGRICULTURAL A-55	Light Green
AGRICULTURAL A-56	Light Green
AGRICULTURAL A-57	Light Green
AGRICULTURAL A-58	Light Green
AGRICULTURAL A-59	Light Green
AGRICULTURAL A-60	Light Green
AGRICULTURAL A-61	Light Green
AGRICULTURAL A-62	Light Green
AGRICULTURAL A-63	Light Green
AGRICULTURAL A-64	Light Green
AGRICULTURAL A-65	Light Green
AGRICULTURAL A-66	Light Green
AGRICULTURAL A-67	Light Green
AGRICULTURAL A-68	Light Green
AGRICULTURAL A-69	Light Green
AGRICULTURAL A-70	Light Green
AGRICULTURAL A-71	Light Green
AGRICULTURAL A-72	Light Green
AGRICULTURAL A-73	Light Green
AGRICULTURAL A-74	Light Green
AGRICULTURAL A-75	Light Green
AGRICULTURAL A-76	Light Green
AGRICULTURAL A-77	Light Green
AGRICULTURAL A-78	Light Green
AGRICULTURAL A-79	Light Green
AGRICULTURAL A-80	Light Green
AGRICULTURAL A-81	Light Green
AGRICULTURAL A-82	Light Green
AGRICULTURAL A-83	Light Green
AGRICULTURAL A-84	Light Green
AGRICULTURAL A-85	Light Green
AGRICULTURAL A-86	Light Green
AGRICULTURAL A-87	Light Green
AGRICULTURAL A-88	Light Green
AGRICULTURAL A-89	Light Green
AGRICULTURAL A-90	Light Green
AGRICULTURAL A-91	Light Green
AGRICULTURAL A-92	Light Green
AGRICULTURAL A-93	Light Green
AGRICULTURAL A-94	Light Green
AGRICULTURAL A-95	Light Green
AGRICULTURAL A-96	Light Green
AGRICULTURAL A-97	Light Green
AGRICULTURAL A-98	Light Green
AGRICULTURAL A-99	Light Green
AGRICULTURAL A-100	Light Green



Excluding:

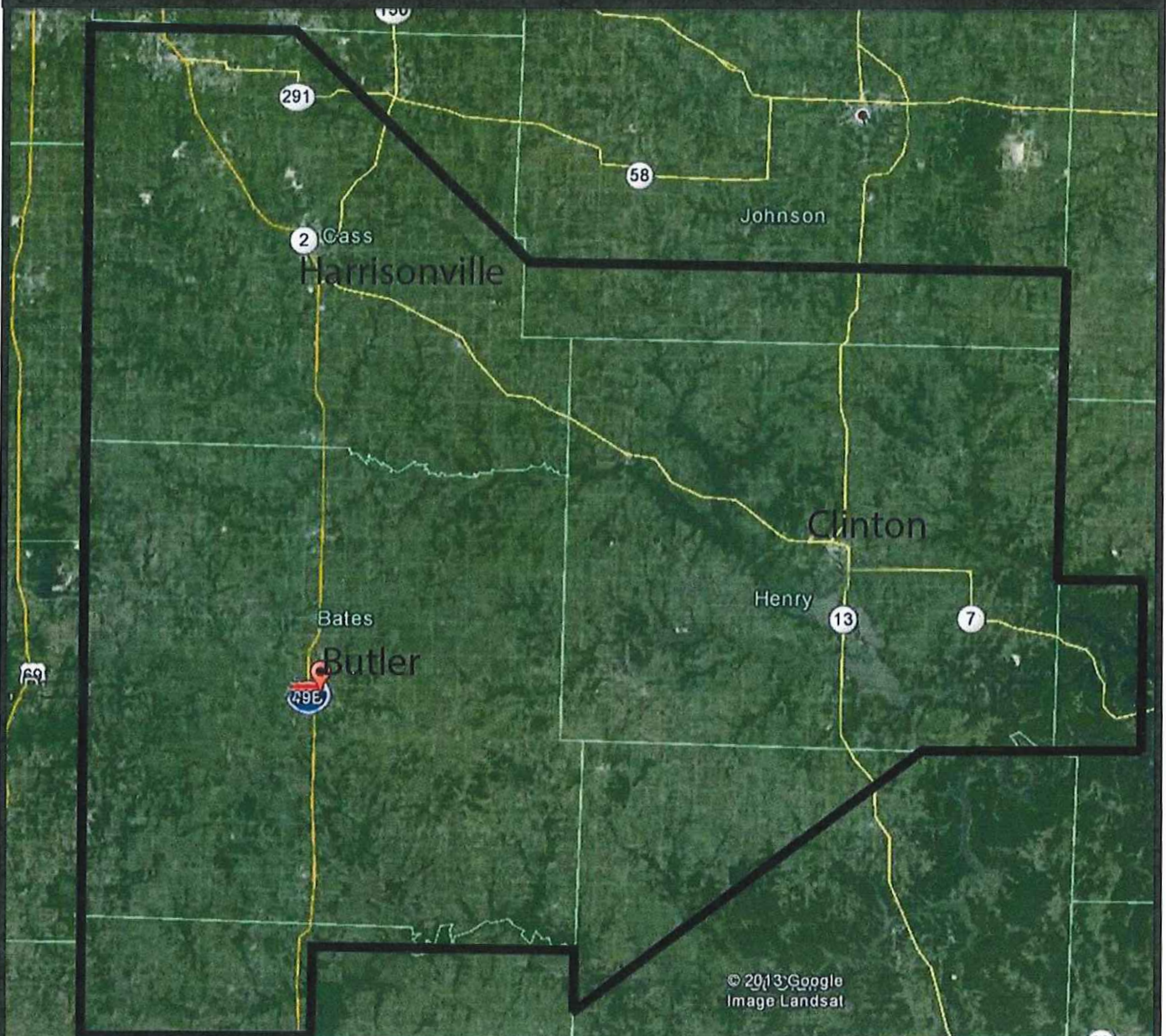
1311 N. Orange Street (crematory)



Exhibit 4 - Amended

The following is a map of the Cooperative's current service territory. Pursuant to this Territorial Agreement, the Cooperative's electric service area shall be this map referenced in Exhibit 4, EXCLUDING the property and territory referenced in Exhibit 1 (the City's corporate boundaries) and Exhibits 2 and 3 (the property and territory being added to the City's electric service area pursuant to this Territorial Agreement)

Osage Valley Electric Cooperative Service Territory



Osage Valley Electric Cooperative is a member-owned rural electric utility providing service in Bates, Cass, Henry, Johnson, Benton, St. Clair and Vernon Counties.



And:

1311 N. Orange Street (crematory)



STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for Permission and Approval and a	)	<u>File No. EA-2022-0244</u>
Certificate of Public Convenience and	)	
Necessity Authorizing it to Construct a	)	
Renewable Generation Facility	)	

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§42. Electric and power

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

§42. Electric and power

The Commission approved an electric utility's application to construct a renewable generation facility.

ELECTRIC

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application to construct a renewable generation facility.

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EVIDENCE, PRACTICE AND PROCEDURE**§8. Stipulation****§30. Settlement procedures**

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the Agreement as unanimous.

GAS**§3. Certificate of convenience and necessity**

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
February, 2023.

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for Permission and Approval and a	)	<u>File No. EA-2022-0244</u>
Certificate of Public Convenience and	)	
Necessity Authorizing it to Construct a	)	
Renewable Generation Facility	)	

**ORDER APPROVING STIPULATION AND AGREEMENT AND
GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: February 8, 2023

Effective Date: March 10, 2023

On July 7, 2022, Union Electric Company d/b/a Ameren Missouri filed an application with the Commission seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a 200 megawatt (MW) solar generation facility, located in Audrain and Ralls Counties, Missouri (referred to as the "Huck Finn Solar Project" or "Project"). The project will be constructed pursuant to a Build Transfer Agreement (BTA) between HFREC Holding Company, LLC (a subsidiary of Ameren Missouri Renewables Holdco, LLC) and EDF Renewables Development, Inc. (EDF Renewables). The completed solar facility will be acquired by Ameren Missouri through various subsidiaries under the BTA and related transactions.

The Commission directed notice and established an intervention deadline. The Commission granted leave to intervene to Renew Missouri and to the Missouri Industrial Energy Consumers (MIEC). The Commission received no other applications to intervene.

On December 1, 2022, the Staff of the Commission (Staff) filed *Staff's Report and Recommendation*. Staff recommended the Commission grant Ameren Missouri a CCN for the Project.

On January 4, 2023, Ameren Missouri filed a *Motion for Leave to File Amended Application* in which it stated that it intended to finance the Project through the use of Production Tax Credits (PTCs) made available upon passage of the federal Inflation Reduction Act, rather than financing the Project using federal Investment Tax Credits (ITCs). In its motion, Ameren Missouri also stated that it intends to enter into a Chapter 100¹ financing arrangement with Audrain and Ralls Counties, as a means of minimizing property taxes that would be generated by the Project and ultimately charged to Ameren Missouri customers. Ameren Missouri estimates that the Chapter 100 arrangement will save its customers approximately \$81.5 million over the expected 30-year life of the Project. The Commission granted Ameren Missouri's motion on January 19, 2023.

Concurrent with the filing of its *Motion for Leave to File Amended Application*, Ameren Missouri filed, on January 4, 2023, an *Amended Application* and a *Stipulation and Agreement* between Ameren Missouri and Staff in which the two parties agreed that a CCN should be issued, subject to the conditions enumerated in the agreement.

Included in the *Stipulation and Agreement* was a request by Ameren Missouri for a CCN for a generation tie line and substation (collectively, "transmission asset") that would collect and transmit the solar energy generated by the Project to Ameren Missouri's Spencer Creek substation. In the *Stipulation and Agreement*, Staff recommended the Commission grant the requested CCN for the transmission asset.

¹ Chapter 100, RSMo.

Later, responding to a Commission order seeking clarification of a provision in the *Stipulation and Agreement*, on January 26, 2023, Ameren Missouri filed, on behalf of itself and Staff, a *Joint Reply to Order Directing Response Regarding Stipulation and Agreement*. Included with the filing was a *Revised Stipulation and Agreement*. The revision corrects a minor error in the original stipulation and agreement.

Commission rules provide that if no party objects to a nonunanimous stipulation and agreement within seven days of its filing, the Commission may treat the stipulation and agreement as unanimous.² More than seven days have passed after the *Revised Stipulation and Agreement* was filed and none of the other parties have objected to it. Thus, the Commission will treat the *Revised Stipulation and Agreement* as unanimous.

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”³ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*⁴

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁵

² 20 CSR 4240-2.115(2).

³ Section 393.170.3, RSMo.

⁴ 30 Mo P.S.C. (N.S.) 554, 561 (1991).

⁵ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for*

In its recommendation, Staff states there is a need for the service, as the Project will enable Ameren Missouri to meet its Missouri Renewable Energy Standard (RES),⁶ which requires electric utilities to generate or purchase no less than 15% of its energy from renewable resources, of which at least 2% must be from solar resources.

Staff also states Ameren Missouri is qualified to provide the service. Ameren Missouri has been in business for over 100 years and has been granted CCNs by Commission for many projects in the past. The builder of the Project, EDF Renewables, has been in business for over 35 years and has constructed large scale solar projects across the United States. Therefore, Staff concludes EDF Renewables is qualified to build or install the Project, while Ameren Missouri is qualified to own, operate, maintain, and otherwise control and manage the Project.

Staff also noted the proposed cost of the Project is less than 10% of Ameren Missouri's capital expenditures through 2023. Thus, Staff concluded Ameren Missouri has the financial ability to construct, operate, and maintain the Project.

Staff states the Project is economically feasible in that it is a cost-effective means of meeting the RES while having a reasonable opportunity of recovering project costs.

Staff concludes the Project promotes the public interest based upon satisfaction of the first four Tartan factors, as well as evidence concerning affiliate transactions, in-service testing, the interconnection transmission line, and applicable Institute of Electrical and Electronics Engineers (IEEE) standards.

a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

⁶ Section 393.1030, RSMo 2016.

The Commission has reviewed the proposed transactions and ownership arrangements during, and at the completion of, Project construction, as described in the *Amended Application*. The Commission finds the transactions are not detrimental to the public interest.

The Commission finds good cause to grant Ameren Missouri a variance from the requirements of Commission Rule 20 CSR 4240-20.045(3)(C), subject to the conditions stated in the *Revised Stipulation and Agreement*.

Taking into consideration the *Revised Stipulation and Agreement* and Staff's recommendation, the Commission concludes the factors for granting a certificate of convenience and necessity have been satisfied. Thus, the Commission will grant Ameren Missouri a CCN to construct, install, own, operate, maintain, and otherwise control and manage a 200 MW solar generation facility in Audrain and Ralls Counties, Missouri, pursuant to a BTA with EDF Renewables. In addition, the Commission will grant Ameren Missouri a CCN for the transmission asset.

Further, the Commission finds the terms of the unopposed *Revised Stipulation and Agreement* are reasonable and will approve it. The Commission will incorporate the terms of the *Revised Stipulation and Agreement* into this order.

THE COMMISSION ORDERS THAT:

1. The provisions of the *Revised Stipulation and Agreement* filed on January 26, 2023, are approved. The signatories, Ameren Missouri, Staff, and Renew Missouri, shall comply with the terms of the *Revised Stipulation and Agreement*. A copy of the *Revised Stipulation and Agreement* is attached to this order as Exhibit A.

2. Ameren Missouri is granted a certificate of convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a 200 MW solar generation facility in Audrain and Ralls Counties, Missouri, pursuant to a BTA with EDF Renewables, and subject to the following conditions:

a. Ameren Missouri shall file with the Commission as-built drawings for the Project within 100 days after the "Final Completion Deadline," as defined in the BTA, provided, that if EDF is excused under the terms of the BTA from providing certain as-built drawings by that deadline Ameren Missouri will file such as-built drawings within 10 days after receipt thereof from EDF. Ameren Missouri will notify the Staff within 10-days after the Final Completion Deadline if there are any as-built drawings for which EDF was excused from delivering by that deadline.

b. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.

c. Ameren Missouri shall file with the Commission notice when the ownership of the communication line has been determined and no later than 60 days after the CCN is approved.

d. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.

e. Ameren Missouri shall no longer pursue the use of a tax equity partnership to finance the construction and instead utilize the production tax credits that will be generated by the Project.

f. Ameren Missouri agrees the in-service criteria contained in Confidential SEL-1 and Confidential SEL-2 attached to the Staff's Recommendation are appropriate for use in a future case to determine whether the Project is in-service.

g. Ameren Missouri represents that the generation tie line and Project substation (345 kV transmission assets that transmit the collect and transmit the solar energy generated by the Huck Finn Solar Project to Ameren Missouri's Spencer Creek substation, collectively, the "transmission asset") will, upon Ameren Missouri becoming the owner of the Huck Finn Solar Project facility, connect an Ameren Missouri facility (Huck Finn Solar Project) to an Ameren Missouri facility (Spencer Creek substation), with property rights obtained without contest from the owner of the single parcel on which the substation will be located and a second single parcel traversed by the line. Ameren Missouri further

represents that there are no habitable structures within 300' of the centerline of the transmission asset. Ameren Missouri represents that it will retain functional control of the transmission asset and that the transmission asset will not be placed under functional control of the Mid-Continent Independent System Operator, Inc. (MISO) or any other regional transmission organization (RTO). Based on those representations, Staff recommends that the Commission's order granting Ameren Missouri's request for a CCN in this case include authority to own, operate, control, and maintain the transmission asset as described in the Ameren Missouri application. However, in the event the transmission asset or its operation is modified such that any of such representations are no longer true, Ameren Missouri agrees to make a filing with the Commission notifying it of any such modification. In the event those modifications include any addition of infrastructure which would require a CCN under the applicable Missouri law in place at that time, Ameren Missouri agrees it is required pursuant to Commission Rule 20 CSR 4240-20.045 or appropriate regulation in place at that time to seek an appropriate CCN. In the event Ameren Missouri seeks to transfer functional control of the transmission asset to MISO or any other entity, it will file an appropriate application.

h. Ameren Missouri shall use sound engineering judgment and commercially reasonable efforts to meet the IEEE Standard P2800™ for the Project and future transmission interconnected solar projects.

i. So long as a secondary market exists for selling Renewable Energy Credits (RECs), Ameren Missouri shall sell available RECs generated from Renewable Energy Standard (RES) assets that are in excess of the Missouri RES requirements or any other future federally mandated compliance standard prior to expiration. The revenues of such sales shall be returned to ratepayers. This condition is not intended to prevent the Ameren Missouri from banking RECs for future RES compliance, as allowed by the Missouri RES and Commission rule.

j. Ameren Missouri shall notify the Commission and provide an updated economic analysis if the transmission network upgrade costs exceed those outlined in the Generator Interconnection Agreement by more than 15%.

3. Upon completion of the Project and transfer of ownership of the Project to Ameren Missouri, Ameren Missouri is granted a certificate of convenience and necessity to construct, install, own, operate, maintain, and otherwise control a generation tie line and substation (collectively, "transmission asset") that collects and transmits the solar energy generated by the Project to Ameren Missouri's Spencer Creek substation, provided that (1) Ameren Missouri obtains property rights without contest from the owner

of the single parcel on which the substation will be located and a second single parcel traversed by the line, (2) Ameren Missouri represents that there are no habitable structures within 300 feet of the centerline of the transmission asset, and (3) Ameren Missouri represents that it will retain functional control of the transmission asset and that the transmission asset will not be placed under functional control of the Mid-Continent Independent System Operator, Inc. (MISO) or any other regional transmission organization (RTO).

4. Ameren Missouri is granted authority to enter into financing arrangements with Audrain and Ralls Counties, pursuant to Chapter 100, RSMo.

5. Ameren Missouri is granted authority and permission under Section 393.190.1, RSMo, to complete the mergers described in the *Amended Application*. The Commission finds completion of the mergers is not detrimental to the public interest. Ameren Missouri is granted waivers of Commission Rules 20 CSR 4240-10.105 and 10.115 to the extent necessary to complete the transactions contemplated in the *Amended Application*.

6. Ameren Missouri is granted a variance from the requirements of Commission Rule 20 CSR 4240-20.045(3)(C), subject to the condition that Ameren Missouri (1) provide as-built drawings after the Project is complete; and (2) submit its final version of plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.

7. This order shall become effective on March 10, 2023.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Seyer, Regulatory Law Judge

EXHIBIT A

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for Permission and Approval and a	)	
Certificate of Public Convenience and	)	File No. EA-2022-0244
Necessity Authorizing it to Construct a	)	
Renewable Generation Facility.	)	

REVISED STIPULATION AND AGREEMENT

COME NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), the Staff of the Missouri Public Service Commission ("Staff"), and Renew Missouri (the "Signatories"¹), and for their Stipulation and Agreement ("Agreement") resolving the Company's *Application*² in this case, state as follows:

BACKGROUND

1. On October 22, 2018, Ameren Missouri filed its *Application* which requested a Certificate of Convenience and Necessity ("CCN").
2. MIEC applied for, and was granted, intervention. OPC is also a party to this docket.
3. On November 14, 2022, Ameren Missouri filed a *Notice Regarding Impact of the Inflation Reduction Act on Relief Sought*,³ indicating that due to the availability of production tax credits under the federal Inflation Reduction Act, Ameren Missouri would not use the tax equity partnership structure described in the Application but instead would use production tax credits because doing so is more favorable for customers.
4. Concurrently with filing this Agreement, Ameren Missouri filed a *Motion for*

¹ While the Missouri Industrial Energy Consumers ("MIEC") and the Office of the Public Counsel ("OPC") are not Signatories, they have each indicated that they do not object to this stipulation.

² EFIS Item No. 2.

³ EFIS Item No. 34.

EXHIBIT A

Leave to File Amended Application so that the record in this docket would reflect the elimination of the relief not sought that had been outlined in the above referenced *Notice*, and would reflect the developer's entering into a Chapter 100 arrangement under Chapter 100 of the Revised Statutes of Missouri as a means to minimize property-tax related expenditures during Ameren Missouri's ownership and operation of the facility.

5. After several discussions, the Signatories have agreed upon the terms of this Agreement, as set forth herein.

AGREEMENTS AMONG THE SIGNATORIES

6.A meren Missouri and Staff agree that, on the terms provided for herein, that the Missouri Public Service Commission ("Commission") should, subject to the conditions provided for in paragraph 7 of this Agreement:

a. Grant Ameren Missouri a certificate of convenience and necessity under subsection 1 of Section 393.170 authorizing Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a 200 megawatt ("MW") solar generation facility, to be constructed in Audrain and Ralls Counties, Missouri pursuant the Build Transfer Agreement ("BTA")⁴ with EDF Renewables Development, Inc. ("EDF") (the "Project").

b. Grant the Company authority and permission under Section 393.190.1 to complete the mergers necessary so that the Company becomes the owner of the Project after the closing provided for by the BTA, determine that completion of such mergers are not detrimental to the public interest, and waive, for good cause shown and to the extent necessary, any requirements of 20 CSR

⁴ The BTA is attached to the Direct Testimony of Company witness Scott Wibbenmeyer filed in this docket.

EXHIBIT A

4240-10.105, 10.115 that would normally apply to a standalone merger application.

c. Grant the Company a variance from the requirements in 20 CSR 4240-20.045(3)(C) such that Ameren Missouri may provide as-built drawings in accordance with Condition a in paragraph 7 of this Agreement, and such that Ameren Missouri can submit an overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages in accordance with Condition b in paragraph 7 of this Agreement.

7. The Signatories agree that the CCN should be granted subject to the following conditions:

a. Ameren Missouri shall file with the Commission as-built drawings for the Project within 100 days after the “Final Completion Deadline,” as defined in the BTA, provided, that if EDF is excused under the terms of the BTA from providing certain as-built drawings by that deadline Ameren Missouri will file such as-built drawings within 10 days after receipt thereof from EDF. Ameren Missouri will notify the Staff within 10-days after the Final Completion Deadline if there are any as-built drawings for which EDF was excused from delivering by that deadline.

b. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.

c. Ameren Missouri shall file with the Commission notice when the ownership of the communication line has been determined and no later than 60

EXHIBIT A

days after the CCN is approved.

d. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.

e. Ameren Missouri shall no longer pursue the use of a tax equity partnership to finance the construction and instead utilize the production tax credits that will be generated by the Project.

f. Ameren Missouri agrees the in-service criteria contained in Confidential SEL-1 and Confidential SEL-2 are attached to the Staff's Recommendation⁵ are appropriate for use in a future case to determine whether the Project is in-service.

g. Ameren Missouri represents that the generation tie line and Project substation (345 kV transmission assets that transmit the collect and transmit the solar energy generated by Huck Finn to Ameren Missouri's Spencer Creek substation, collectively, the "transmission asset") will, upon Ameren Missouri becoming the owner of the Huck Finn facility, connect an Ameren Missouri facility (Huck Finn) to an Ameren Missouri facility (Spencer Creek substation), with property rights obtained without contest from the owner of the single parcel on which the substation will be located and a second single parcel traversed by the line. Ameren Missouri further represents that there are no habitable structures within 300' of the centerline of the transmission

⁵ EFIS Item No. 36.

EXHIBIT A

asset. Ameren Missouri represents that it will retain functional control of the transmission asset and that the transmission asset will not be placed under functional control of MISO or any other RTO. Based on those representations, Staff recommends that the Commission's order granting Ameren Missouri's request for a CCN in this case include authority to own, operate, control, and maintain the transmission asset as described in the Ameren Missouri application. However, in the event the transmission asset or its operation is modified such that any of such representations are no longer true, Ameren Missouri agrees to make a filing with the Commission notifying it of any such modification. In the event those modifications include any addition of infrastructure which would require a CCN under the applicable Missouri law in place at that time, Ameren Missouri agrees it is required pursuant to 20 CSR 4240-20.045 or appropriate regulation in place at that time to seek an appropriate CCN. In the event Ameren Missouri seeks to transfer functional control of the transmission asset to MISO or any other entity, it will file an appropriate application.

h. Ameren Missouri shall use sound engineering judgement and commercially reasonable efforts to meet the IEEE Standard P2800TM for the Project and future transmission interconnected solar projects.

i. So long as a secondary market exists for selling RECs, Ameren Missouri shall sell available RECs generated from Renewable Energy Standard assets that are in excess of the Missouri RES requirements or any other future federally mandated compliance standard prior to expiration. The revenues of

EXHIBIT A

such sales shall be returned to ratepayers. This condition is not intended to prevent the Company from banking RECs for future RES compliance as allowed by the Missouri RES and Commission rule.

j. Ameren Missouri shall notify the Commission and provide an updated economic analysis if the transmission network upgrade costs exceed those outlined in the Generator Interconnection Agreement by more than 15%.

GENERAL PROVISIONS OF AGREEMENT

8. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost-of-service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology.

9. This Agreement is a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their witnesses (if any) and attorneys on the issues resolved by this Stipulation, so long as all Signatories have had adequate notice of that session. The Signatories agree to cooperate in presenting this Stipulation to the Commission for approval, and

EXHIBIT A

will take no action, direct or indirect, in opposition to the request for approval of this Stipulation.

10. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

11. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

12. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

13. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the settled issues in these cases explicitly set forth above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the

EXHIBIT A

Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

14. This Agreement embodies the entirety of the agreements between the Signatories in this case on the issues addressed herein and may be modified by the Signatories only by a written amendment executed by all of the Signatories.

15. Contingent upon Commission approval of this Stipulation without modification, the Signatories hereby stipulate to the admission into the evidentiary record of Ameren Missouri's testimony, with the exception of witness Mitchell Lansford's testimony, and Staff's Report and Recommendation.

EXHIBIT A

WHEREFORE, the Signatories request the Missouri Public Service Commission issue an order approving the terms and conditions of this Stipulation and Agreement and granting the permission and authority set forth herein, on and subject to the conditions set forth herein.

Respectfully submitted,

/s/ James B. Lowery

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**ATTORNEYS FOR RENEW
MISSOURI**

EXHIBIT A

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on counsel for all parties of record in this case on via electronic mail (e-mail) on this 26th day of January, 2023.

/s/ James B. Lowery

James B. Lowery

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Missouri-	)	
American Water Company's Request for	)	
Authority to Implement General Rate	)	<u>File No. WR-2022-0303</u>
Increase for Water and Sewer Service	)	
Provided in Missouri Service Areas	)	

**ORDER GRANTING OPC MOTION FOR PRODUCTION
OF DOCUMENTS PURSUANT TO SECTION 386.450**

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§6. Weight, effect and sufficiency

The Commission found that good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.” Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.” To constitute good cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.” And some legitimate factual showing is required, not just the mere conclusion of a party or its attorney.

§19. Records and books of utilities

In finding that information regarding capital structure was relevant, the Commission found that relevance can be established by a showing of the connection of the requested information to this rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

§24. Procedures, evidence and proof

In finding that information regarding capital structure was relevant, the Commission found that relevance can be established by a showing of the connection of the requested information to this rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

§29. Discovery

The Commission found that the Office of the Public Counsel was entitled to certain information under section 386.450, RSMo, and further that the requested information was relevant and should be produced.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of February, 2023.

In the Matter of the Application of Missouri-)
American Water Company's Request for)
Authority to Implement General Rate)
Increase for Water and Sewer Service)
Provided in Missouri Service Areas)

File No. WR-2022-0303

**ORDER GRANTING OPC MOTION FOR PRODUCTION
OF DOCUMENTS PURSUANT TO SECTION 386.450**

Issue Date: February 16, 2023

Effective Date: February 16, 2023

On February 3, 2023, the Office of the Public Counsel (OPC) filed a Motion for Production of Documents Pursuant to Section 386.450. OPC wishes to evaluate the financing arrangements between American Water Works Company, Inc. (American Water) and its subsidiaries, including Missouri American Water Company (MAWC). OPC claims this information will assist it in developing its position regarding MAWC's capital structure for ratemaking purposes. The capital structure, in turn, affects the return on equity and the overall rate of return MAWC will receive.

OPC asks the Commission to order American Water to provide certain information to OPC no later than February 16, 2023¹. MAWC objects, stating that it does not have the ability to produce the documents, and that OPC has failed to show good cause for receiving the documents. American Water has not responded.

¹ This information was attached to OPC's motion as Exhibit A, and is attached to this order, also as Exhibit A.

Discovery versus Section 386.450

Section 386.450 is set out in full below:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.

As the Commission has previously discussed, neither relevance nor personal jurisdiction are required for OPC to invoke Section 386.450.² Section 386.450 RSMo is broader than the general right to discovery allowed under Missouri's rules of civil procedure. The Commission has consistently interpreted this statute broadly, given the unique grant of investigative power bestowed upon OPC and the Commission by the Missouri General Assembly via this statute.³

In addition, the Commission also finds the information OPC requests to be relevant. Relevance can be established by a showing of the connection of OPC's requested information to this file, which is a rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

Good cause

Before the Commission can grant OPC relief, the Commission must determine whether good cause has been shown. Good cause "generally means a substantial

² *In Re Elm Hills' Request for a Water and Sewer Rate Increase*, Commission File No. WR-2020-0275, *Order Granting Motion for Production* (October 28, 2020).

³ See, e.g., *In re Croasdell*, File No. WC-2008-0331, *Order Denying Objection to Order and Motion to Dismiss of Universal Utilities*, July 15, 2008 (stating that the statute applies to any corporation, not just public utilities); *In re Missouri-American Water Company*, File No. WR-2003-0500, *Order Concerning Motion to Compel*, (December 2, 2003) (acknowledging the statute includes non-parties).

reason amounting in law to a legal excuse for failing to perform an act required by law.”⁴ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁵

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁶ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁷

The Commission finds that OPC has shown good cause in that the information it wishes to receive is pertinent to what appears to be a disputed issue; namely, what MAWC’s capital structure should be for ratemaking purposes. The Commission is statutorily required to ensure that MAWC’s rates are just and reasonable.⁸

Multi-layered corporate relationships with holding companies make it difficult for the Commission to know where the capital funding is coming from. Knowing the source and type of capital directly addresses the risk that the capital structure is being manipulated to increase equity, which might, in turn, unjustly increase rates. The information OPC requests goes to the heart of MAWC’s rate increase request.

OPC states that it cannot verify MAWC’s claims that it is financially independent from its parent company without access to American Water’s books and records. In fact, the Commission is expressly required to examine the dealings of regulated entities with

⁴ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁶ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁷ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

⁸ Section 393.130, RSMo.

their unregulated affiliates, and specifically to “inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses.”⁹

Thus, in finding good cause, the Commission finds not only that OPC is entitled to the information pursuant to Section 386.450, but also that the information is relevant to OPC’s position of what MAWC’s capital structure and overall rate of return should be. What is more, the Commission further notes that Section 386.450 states that upon the request of OPC, upon good cause shown, the Commission shall require production of the requested books, accounts, papers or records.

The Commission notes that American Water or MAWC may seek a protective order or other remedies should they believe OPC’s request is unreasonable.

THE COMMISSION ORDERS THAT:

1. The Motion for Production of Documents Pursuant to Section 386.450 is granted.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Pridgin, Regulatory Law Judge

⁹ *In re Elm Hills*, Order Granting Motion for Production, p. 4.

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence)
 Rivers Utility Operating Company, Inc., for a)
 Certificate of Convenience and Necessity and)
 to Acquire Certain Sewer Assets in Cass)
 County, Missouri.) **File No. SA-2023-0187**

ORDER GRANTING AUTHORITY TO ACQUIRE SEWER ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§47. Sewers

The Commission is authorized to grant a sewer corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in Cass County, Missouri.

SEWER

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in Cass County, Missouri.

§2. Certificate of convenience and necessity

The Commission is authorized to grant a sewer corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day
of March, 2023.

In the Matter of the Application of Confluence	)	
Rivers Utility Operating Company, Inc. for a	)	
Certificate of Convenience and Necessity and	)	<u>File No. SA-2023-0187</u>
to Acquire Certain Sewer Assets in Cass	)	
County, Missouri.	)	

**ORDER GRANTING AUTHORITY TO ACQUIRE SEWER ASSETS AND
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: March 22, 2023

Effective Date: April 21, 2023

On December 6, 2022, Confluence Rivers Utility Operating Company, Inc. (Confluence) filed an application seeking a certificate of convenience and necessity (CCN) and authorization to acquire the sewer assets of Oasis MHP LLC (Oasis), a mobile home park in Cass County, Missouri.

On December 7, 2022, the Commission ordered its Staff to file a recommendation regarding Confluence's application, issued notice, and set a deadline for intervention requests. No requests for intervention were received. On March 10, 2023, Staff filed its recommendation in which it recommended the Commission grant Confluence's application with certain conditions. On March 16, 2023, Confluence filed its response to Staff's recommendation stating that it has no objection to the proposed conditions. No other party has objected to Staff's recommendation. No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided. Thus, the Commission will make a determination based on the verified

applications, Staff recommendation, and the response to Staff's recommendation filed by Confluence.¹

Confluence is an existing regulated water and sewer utility currently providing water and sewer service in several service areas throughout Missouri. Confluence is a subsidiary of Central States Water Resources, LLC. Confluence provides water service to approximately 4,400 customers and sewer service to approximately 4,600 customers in Audrain, Boone, Cole, Franklin, Greene, Jefferson, Lincoln, Madison, Montgomery, Perry, Phelps, St. Francois, Taney, and Washington Counties in Missouri. Confluence is a corporation that is in "good standing" with the Missouri Secretary of State.

Confluence's application asks the Commission to issue an order authorizing it to acquire the sewer system assets of Oasis, an unregulated utility, and a CCN to operate the acquired asset. Oasis is a Missouri limited liability company, and a subsidiary of Legacy Investments Group, LLC. Oasis operates a mobile home park in Cass County, Missouri, which currently serves approximately 60 residents/pads, with the capacity for 81 total residents/pads. Oasis is an unregulated sewer operation, which has no pending actions before the Commission.

Oasis currently operates its wastewater treatment facility subject to an Abatement Order on Consent between itself and the Missouri Department of Natural Resources. Under that consent order, Oasis must either sell the wastewater treatment facility to a reputable utility company within 365 days of the May 25, 2022 effective date, or retain a professional engineer and begin the process of rehabilitating it under a stringent timeline. This system will require investment after the purchase by Confluence.

¹ See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”² The Commission often applies the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to Confluence have been satisfied and that it is in the public's interest for Confluence to provide sewer service to the Oasis wastewater treatment facility. Further, the Commission finds that Confluence possesses adequate technical, managerial, and financial capacity to operate the sewer system. The Commission will authorize the certificate of convenience and necessity for Confluence to provide sewer service subject to the conditions described in Staff's recommendation memorandum and within the service area defined in Attachments A and B of the memorandum.

Confluence's application also asks the Commission to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1). Confluence filed an affidavit pursuant to Commission Rule 20 CSR 4240-4.017(1)(D) stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application. Based on the contents of Confluence's affidavit, the

² Section 393.170.3, RSMo.

Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Confluence's application to acquire the sewer system assets of Oasis is granted.
2. Confluence is granted a certificate of convenience and necessity to provide sewer service to the area described in the revised map and legal description proposed by Staff,³ subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:
 - a. Confluence shall revise P.S.C. MO No. 21 for the addition of the System, to become effective before closing on the assets, by filing tariff sheets for the service area map, service area written description for the Oasis system, and a revised table of contents;
 - b. Confluence shall notify the Commission of closing on the assets within five (5) days after such closing;
 - c. If closing on the sewer assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, Confluence shall submit a status report within five (5) days after this thirty (30) day period regarding the status of the closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Confluence determines that the transfer of the assets will occur;
 - d. If Confluence determines that a transfer of the assets will not occur, Confluence shall notify the Commission of such, no later than the date of the next status report, as addressed above, after such determination is made, and require Confluence to submit tariff sheets as appropriate that would cancel the service area map and description applicable to Oasis in its sewer tariff, and rate and charge sheet applicable to customers in the Oasis service area in the sewer tariff;

³ Staff Recommendation, File No. SA-2023-0187 Attachments A and B (Filed on March 10, 2023).

- e. Confluence Shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts;
- f. Confluence shall adopt its current depreciation rates for the Oasis system and these rates are attached to Staff's Memorandum, dated March 10, 2023, as Attachment C;⁴
- g. Confluence shall provide training to its call center personnel regarding rates and rules applicable to the sewer customer in the acquired area;
- h. Confluence shall provide to the CXD Staff a copy of the first bill for the acquired company within ten (10) days after the initial bill; and
- i. Confluence shall file notice in this case outlining completion of the above-recommended training and billing for the acquired company within ten (10) days after such training and billing occur.

3. No part of this order shall be construed to preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to utility plant constructed within the new service area, or providing service in the new service area, in any later proceeding.

4. The Commission grants Confluence's request to waive the notice requirement of 20 CSR 4240-4.017(1).

5. This order shall become effective on April 21, 2023.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Keeling, Regulatory Law Judge

⁴ *Staff Recommendation*, File No. SA-2023-0187 Attachment C (Filed on March 10, 2023).

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy	)	
Missouri West, Inc. d/b/a Evergy Missouri	)	
West for Permission and Approval of a	)	
Certificate of Public Convenience and	)	
Necessity Authorizing It to Purchase,	)	<u>File No. EA-2022-0328</u>
Own, Operate, Maintain and Otherwise	)	
Control and Manage an Existing Wind	)	
Generation Facility in Oklahoma	)	

REPORT AND ORDER

CERTIFICATES

§21. Grant or refusal of certificate generally

§21.1. Public interest

§22. Restriction and conditions

The Commission found the grant of a certificate of convenience and necessity to Evergy Missouri West with certain conditions was in the public interest.

§21. Grant or refusal of certificate generally

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§42. Electric and power

The Commission is authorized to grant an electrical corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service." The term 'necessity' does not mean 'essential' or absolutely indispensable', but that an additional service would be an improvement justifying its cost.

ELECTRIC**§3. Certificate of convenience and necessity**

The Commission is authorized to grant an electrical corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either “necessary or convenient for the public service.” The term ‘necessity’ does not mean ‘essential’ or absolutely indispensable, but that an additional service would be an improvement justifying its cost.

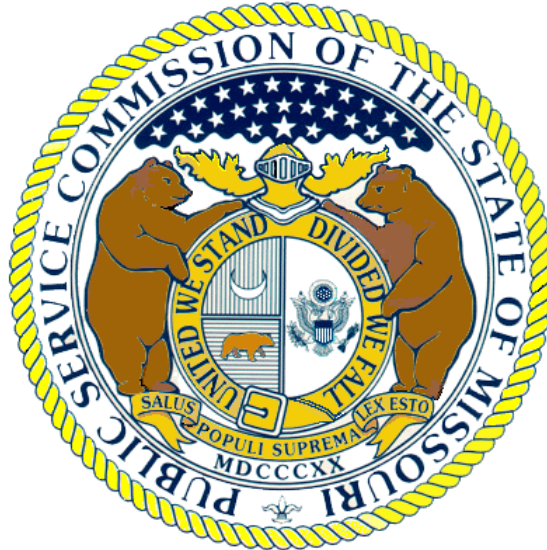
§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for Permission and Approval of a)
Certificate of Public Convenience and)
Necessity Authorizing It to Purchase,)
Own, Operate, Maintain and Otherwise)
Control and Manage an Existing Wind)
Generation Facility in Oklahoma)

File No. EA-2022-0328

REPORT AND ORDER

Issue Date: **April 6, 2023**

Effective Date: **April 16, 2023**

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for Permission and Approval of a)
Certificate of Public Convenience and) **File No. EA-2022-0328**
Necessity Authorizing It to Purchase,)
Own, Operate, Maintain and Otherwise)
Control and Manage an Existing Wind)
Generation Facility in Oklahoma)

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RENEW MISSOURI:

Alissa Greenwald, Attorney at Law, P.O. Box 413071, Kansas City, MO 64141

REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On August 18, 2022, Evergy Missouri West, Inc. (EMW) filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN) pursuant to Sections 393.170.2 and 393.190.1, RSMo, and the Commission's Rules 20 CSR 4240-20.045 and 2.060. The requested CCN would authorize EMW to operate, manage, maintain, and control an existing and operational wind generation facility in Woodward, Ellis, and Dewey Counties (near the town of Vici) in Oklahoma known as Persimmon Creek Wind Farm (referred to herein as "Persimmon Creek"). Persimmon Creek is expected to serve EMW's customers in Missouri and EMW expects that the asset will be included in rate base used to set retail rates.

The Commission granted the application to intervene of Renew Missouri Advocates d/b/a Renew Missouri. On February 21-22, 2023, the Commission held an evidentiary hearing. During the evidentiary hearing, the parties presented evidence relating to the following issues identified by the parties:

A. Does the evidence establish that granting an Operating CCN to EMW to own, operate, and maintain Persimmon Creek is necessary or convenient for the public service, pursuant to Section 393.170.2-3, RSMo, and 20 CSR 4240-20.045(2)-(3)?

- 1. Is there a need for EMW to operate Persimmon Creek?**
- 2. Does EMW have the financial ability to operate Persimmon Creek?**
- 3. Is EMW qualified to operate Persimmon Creek?**
- 4. Is EMW's proposed operation of Persimmon Creek economically feasible?**
- 5. Does EMW's proposed operation of Persimmon Creek promote the public interest?**

B. If the Commission grants an Operating CCN for the Project, what conditions, if any, should the Commission impose on the CCN?

- 1. Should a production tax credit tracker be established?**
- 2. Should the Commission order that EMW track revenues produced by Persimmon Creek for ratemaking purposes?**

C. Should the Commission Order EMW to provide resource-specific economic analysis utilizing reasonable assumptions beyond the IRP results, LCOE estimates, and installed capacity costs in support of future CCN applications?

D. What, if any, additional project-specific analysis requirements should the Commission Order from EMW for future CCN requests?

E. Does the evidence establish that authorizing EMW under Section 393.190.1 to complete the asset transfer and merger described in the Application so that it may own and operate Persimmon Creek is not detrimental to the public interest?

Initial post-hearing briefs were filed on March 9, 2023, and reply briefs were filed on March 17, 2023.

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. EMW is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105.¹ EMW is an electrical

¹ EMW was formerly known as KCP&L Greater Missouri Operations Company (GMO).

corporation and public utility that provides electric service to the public in Missouri.² EMW is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri, including the suburban Kansas City metropolitan area, St. Joseph, and surrounding counties.³

2. EMW is a wholly owned subsidiary of Evergy, Inc. The other public utilities wholly owned by Evergy, Inc. are Evergy Metro, Inc. and Evergy Kansas Central, Inc.⁴

3. EMW filed an application on August 18, 2022, seeking a CCN to operate, manage, maintain, and control Persimmon Creek. Persimmon Creek is an existing and operational wind generation facility in Woodward, Ellis, and Dewey Counties (near the town of Vici) in Oklahoma.

4. Staff is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁵ Staff participated in this proceeding.

5. Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

6. Renew Missouri is a party after being granted intervention.⁶

7. The Inflation Reduction Act (IRA) was passed into law August 16, 2022,⁷ and EMW filed its application for a CCN in this case two days later.

² File No. EA-2022-0328, *Application of Evergy Missouri West for an Operating Certificate of Convenience and Necessity*, (filed Aug. 18, 2022) (“Application”).

³ Application, paragraph 1.

⁴ Application, para. 3.

⁵ Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).

⁶ File No. EA-2022-0328, *Order Granting Intervention*, (issued Sept. 20, 2022).

⁷ Inflation Reduction Act of 2022 Pub. L. 117-169 (Aug. 16, 2022).

Persimmon Creek Wind Farm

8. Persimmon Creek is an existing electric generating facility with 80 wind turbine generators. It has a nameplate capacity of 198.6 megawatts (MW) and spans approximately 17,000 acres in parts of Woodward, Ellis, and Dewey Counties in Oklahoma.⁸

9. Persimmon Creek became operational in August 2018 and is expected to have a 20-year life.⁹

10. Power from the turbines is collected at the Persimmon Creek-owned substation, stepped-up and transmitted over a Persimmon Creek-owned three-mile 345 kV overhead transmission line to the Guthrie Switchyard. At this switchyard the Persimmon Creek power is aggregated with the power output of another operating wind farm and is transmitted over approximately eleven more miles of transmission line to the point of interconnection at the Woodward District Substation owned by Oklahoma Gas and Electric Co.¹⁰

11. EMW expects to use Persimmon Creek to serve its customers, all of whom are in Missouri.¹¹

12. As an owned resource, Persimmon Creek will be under EMW's operational control. EMW expects to recover its investment through base rates and operations and maintenance expense (O&M), as opposed to purchased power costs.¹²

13. To find Persimmon Creek, EMW conducted a competitive request-for-proposal (RFP) process of which Persimmon Creek was one option received. The RFP

⁸ Exhibit 1, Dority Direct, page 3.

⁹ Ex. 1, Dority Direct, p. 3.

¹⁰ Ex. 1, Dority Direct, pp. 3-4.

¹¹ Ex. 1, Dority Direct, p. 5.

¹² Ex. 1, Dority Direct, p. 6.

evaluation process included comparative valuations of other similar projects that have been offered for sale.¹³

14. Persimmon Creek generates renewable energy that provides renewable energy certificates (RECs) and is eligible for currently available federal Production Tax Credits (PTCs).¹⁴

15. Persimmon Creek is attractive compared to alternative available projects from a permitting and supply chain perspective because it is already operational with the lowest congestion risk for delivery to Missouri customers.¹⁵

16. High-capacity factor wind generation from western Oklahoma is one of the cheapest forms of renewable energy in the United States.¹⁶

17. EMW signed a Membership Interest Purchase Agreement with GSQ, LLC on August 8, 2022 to purchase all the membership shares in Persimmon Creek and the shared facilities agreement for interconnection for a purchase price of \$245,700,000 plus working capital adjustments and adjustments for PTC value, both to be finalized at closing.¹⁷

18. EMW intends to finance the \$245,700,000 purchase price through EMW's available utility financing resources with the intent that Persimmon Creek will ultimately be included in rate base through the Commission's traditional ratemaking and cost of capital procedures.¹⁸ No party disputed that EMW had the ability to finance the project.

¹³ Ex. 1, Dority Direct, p. 5.

¹⁴ Ex. 1, Dority Direct, p. 6.

¹⁵ Ex. 7, Dority Surrebuttal, p. 13.

¹⁶ Ex. 7, Dority Surrebuttal, p. 13.

¹⁷ Ex. 1, Dority Direct, p. 4.

¹⁸ Ex. 1, Dority Direct, p. 6.

19. EMW provided detailed explanations of the series of transactions that will ultimately lead to EMW's ownership of Persimmon Creek.¹⁹

20. EMW also provided the general plans and specifications that were followed to construct Persimmon Creek.²⁰

21. EMW has a long history of operating generation, transmission, and distribution facilities that provide electricity in Missouri through the construction, operation, and ownership of different power generation assets and methods, including wind generation.²¹ No party disputed that EMW was qualified to own and operate Persimmon Creek.

22. Persimmon Creek offers EMW long-term ownership of an efficient and productive renewable resource at a competitive price with a reduced risk profile compared to the other alternatives evaluated.²²

23. Due to its status as a monopoly, once the plant is included in rates, EMW's shareholders will be insulated from the risk that the revenues from Persimmon Creek do not exceed the costs. Instead this risk would be borne by the ratepayers.²³

The IRP Process

24. The integrated resource planning (IRP) process is completed by electric utilities under the Commission's Rules found in Chapter 22 (20 CSR 4240-22). The IRP process results in the selection of a Preferred Plan which is the combination of supply-

¹⁹ Ex. 1, Dority Direct, p. 6.

²⁰ Ex. 1, Dority Direct, p. 6.

²¹ Ex. 1, Dority Direct, p. 8.

²² Ex. 2, Humphrey Direct, p. 17.

²³ Ex. 104, Luebbert Rebuttal, p. 10; and Ex. 201, Mantle Surrebuttal, pp. 14-15.

side and demand-side resources which EMW will use to meet forecasted customer requirements for the next twenty years.²⁴

25. The IRP process is not a contested case at the Commission and the Commission does not approve the plan chosen by the utility.

26. Although deficiencies and concerns may be raised by parties in IRP filings, no hearing is required under the Commission's Electric Utility Resource Planning rules found in Chapter 22 (20 CSR 4240-22). Therefore, these concerns and deficiencies often need to be brought in front of the Commission through other avenues that require a hearing.²⁵

27. There are two primary needs which are evaluated through the IRP process to determine whether new resource additions are necessary. The first is capacity. As a load-serving entity, EMW's planning is built around maintaining sufficient accredited capacity resources to meet its forecasted peak load plus the planning reserve margin required by the Southwest Power Pool (SPP). The second need is energy. As a participant in the SPP Integrated Market, EMW does not provide energy from its resources (or power purchases) to match its load in every hour, as it would have when it operated as its own Balancing Authority before the advent of the SPP Integrated Market.²⁶

28. EMW's capacity need is forecasted over the next 20 years based on its projected summer peak load plus SPP's planning reserve margin (historically 12%, however, SPP will increase the planning reserve margin to 15% beginning in the summer of 2023²⁷). Each resource plan built in the IRP (also known as an Alternative Resource

²⁴ Ex. 6, Messamore Supplemental Direct, p. 3.

²⁵ Ex. 101, Fortson Rebuttal, p. 6.

²⁶ Ex. 6, Messamore Supplemental Direct, p. 5.

²⁷ Ex. 6, Messamore Supplemental Direct, p. 10.

Plan) meets this capacity requirement by ensuring the accredited capacity from the resource plan is at least equal to this requirement (112% of forecasted summer peak). If EMW's portfolio of existing accredited capacity is less than this requirement, new capacity is needed.²⁸

29. EMW meets the SPP resource adequacy requirements on a combined basis with Evergy Missouri Metro.²⁹

30. Through its 2021 and 2022 IRPs, EMW identified wind resources as part of its overall Preferred Plan. According to EMW's Preferred Plan analysis, wind resources added in the first five years of the Preferred Plan reduced costs for customers by \$64 million over time compared to the other Alternative Resource Plans reviewed.³⁰

31. Staff raised concerns that EMW had manually adjusted its inputs to influence its IRP modeling to get the outputs it wanted.³¹

32. Staff recommended in EMW's June 10, 2022 annual IRP update filing³² that EMW allow its capacity expansion model to develop an optimized resource plan by selecting from an inventory of resource options, including both supply-side and demand-side resources.³³

33. EMW performed and completed an All Source Request for Proposal and, after viewing the results, Kayla Messamore acknowledged that she manually changed EMW's IRP inputs in Plexos³⁴ from solar generation to wind generation by 2024.³⁵

²⁸ Ex. 6, Messamore Supplemental Direct, p. 5.

²⁹ Ex. 100, Eubanks Rebuttal, p. 4; Ex. 104, Luebbert Rebuttal, p. 9, footnote 8, and p. 45, fn. 62.

³⁰ Ex. 6, Messamore Supplemental Direct, p. 17.

³¹ Ex. 101, Fortson Rebuttal, pp. 11-12.

³² File No. EO-2022-0202, *In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's 2022 Integrated Resource Plan Annual Update Filing*.

³³ Ex. 101, Fortson Rebuttal, p. 3.

³⁴ Plexos is the program that creates capacity expansion models that are designed to optimize a utility's acquisition of assets.

³⁵ Ex. 6, Messamore Supplemental Direct, pp. 17-18.

34. Capacity expansion models like Plexos can also be provided with an inventory of resource options, both specific resources and/or generic resources, which are then selected by the model through its optimization process based on their relative cost and operating characteristics. Resource plans derived in this manner are model outputs, rather than inputs.³⁶

35. From October 18, 2021, to November 23, 2021, EMW conducted a wind RFP, resulting in EMW choosing Persimmon Creek as its best option. EMW filed a notice that it intended to file its application in this case on May 24, 2022.³⁷

36. EMW filed an annual IRP update on June 10, 2022, in File No. EO-2022-0202, informing the Commission of changes in the EMW's resource acquisition schedule from the 120 MW of solar generation in its 2021 IRP to 150 MW of wind generation in 2024. This change resulted from Kayla Messamore manually adjusting the inputs in EMW's capacity expansion modeling program, Plexos.³⁸

37. Staff, through its analysis of EMW's modeling, raised a number of concerns about similarities in the Alternative Resource Plans that led it to believe that EMW was influencing the modeling to get desired outputs by manually adjusting its inputs.³⁹

38. On September 26, 2022, EMW filed a notice of changes to its Preferred Plan (Change to 2022 Updated IRP) along with its analysis after changing the IRP to reflect the acquisition of Persimmon Creek.⁴⁰

39. In its Change to 2022 Updated IRP, EMW assumed Persimmon Creek would provide 20 MW of accredited capacity, leaving EMW's capacity need after

³⁶ Ex. 101, Fortson Rebuttal, p. 7.

³⁷ File No. EA-2022-0328, *Notice of Intended Case Filing*, (filed May 24, 2022).

³⁸ Ex. 6, Messamore Supplemental Direct, p. 18.

³⁹ Ex. 101, Fortson Rebuttal, p. 9-11.

⁴⁰ File No. EO-2023-0115, *Notice of Change in Plan*, (filed Sept. 26, 2022).

Persimmon Creek at 150 MW in 2024. Thus, Persimmon Creek would satisfy only a small part of EMW's need identified in the 2022 Annual Update to its Preferred Plan.⁴¹

40. According to EMW, the Updated Preferred Plan showed \$66 million in additional customer savings because Persimmon Creek was a lower-cost, higher-output resource option than the more generic wind resources originally included in the IRP analysis.⁴²

41. The IRP assesses the physical energy needs and the hourly import constraints are applied to ensure net market purchases in each hour do not exceed transmission capabilities. However, given the significant import capacity available with EMW's neighbors, a constraint on transmission is not typically a constraint that is evaluated in the IRP analysis.⁴³

42. The resource options evaluated in EMW's Updated Preferred Plan to meet capacity and energy needs were wind, solar, natural gas, and market capacity purchases. Other resource types (such as battery energy storage) were excluded.⁴⁴

43. The IRP evaluates energy needs through the calculation of all-in revenue requirements (including net fuel and purchased power costs as well as capital and O&M) for different resource plans.⁴⁵

44. Historically, Alternative Resource Plans were created manually with incremental changes to additions or retirements made one at a time to identify the revenue requirement impact of each decision (i.e., whether the decision increased or decreased customer costs, all else being equal). In this approach, a mix of different

⁴¹ Ex. 6, Messamore Supplemental Direct, p. 10.

⁴² Ex. 6, Messamore Supplemental Direct, p. 17.

⁴³ Ex. 6, Messamore Supplemental Direct, p. 7.

⁴⁴ Ex. 6, Messamore Supplemental Direct, p. 13.

⁴⁵ Ex. 6, Messamore Supplemental Direct, p. 7-8.

resource types are evaluated one-by-one to assess which resource type is the most cost-effective. Beginning with its 2022 IRP, EMW supplemented this method with capacity expansion modeling.⁴⁶

45. Capacity expansion modeling identifies the lowest-cost portfolio of resource additions given a specific market price scenario and forecasted capacity need. Both approaches are designed to meet EMW's forecasted capacity need while also building a portfolio of economic energy sources. Ultimately, whether a resource plan is the most economical solution to meet both capacity and energy needs is determined based on its overall cost (the net present value of revenue requirement (NPVRR)).⁴⁷

46. NPVRR is calculated for each Alternative Resource Plan across each different scenario and a probability-weighted average (expected value) is calculated for each plan. These expected values are then compared across Alternative Resource Plans to identify the resource plan which is lowest cost on a risk-adjusted basis.⁴⁸

47. Eleven EMW Alternative Resource Plans were developed for the 2022 IRP annual update. Of those eleven Alternative Resource Plans, ten of them included 150 MW of renewable wind resources in 2024. One Alternative Resource Plan differed in regard to wind by including 80 MW of renewable wind resources in 2025 and 80 MW of renewable wind resources in 2026. Another of the ten Alternative Resource Plans that included 150 MW of renewable wind resources in 2024 also included 24 MW of renewable wind resources in 2026 in addition to the 150 MW of renewable wind resources in 2024 and in 2025. Five of the Alternative Resource Plans also included 72 MW of renewable

⁴⁶ Ex. 6, Messamore Supplemental Direct, p. 9.

⁴⁷ Ex. 6, Messamore Supplemental Direct, p. 9.

⁴⁸ Ex. 6, Messamore Supplemental Direct, p. 9-10.

wind resources in 2026 in addition to the 150 MW of renewable wind resources in each 2024 and 2025.⁴⁹

The Energy Market

48. EMW is currently in a high market price environment.⁵⁰

49. EMW has a need for capacity by 2024.⁵¹

50. The accredited capacity in SPP for wind resources is based on ten percent of its listed nameplate capacity.⁵²

51. In terms of energy, EMW has been a net purchaser from the SPP energy market since the market was created in 2014.⁵³

52. There is an expectation of elevated gas and energy prices in the long-term.⁵⁴

53. Due to Evergy Missouri West's participation in SPP, the Company will be responsible for market energy costs to serve the load of ratepayers regardless of the acquisition of Persimmon Creek.⁵⁵

Production Tax Credits

54. Persimmon Creek will generate PTCs during the first ten years of operations, which began in 2018. If EMW is permitted to purchase the facility, it will own the remaining PTCs generated.⁵⁶

⁴⁹ Ex. 101, Fortson Rebuttal, p. 9.

⁵⁰ Ex. 6, Messamore Supplemental Direct, p. 2.

⁵¹ Ex. 6, Messamore Supplemental Direct, p. 10; and Ex. 9, Messamore Surrebuttal, p. 10.

⁵² Tr. p. 143-144; Ex. 9, Messamore Surrebuttal, p.20.

⁵³ Ex. 6, Messamore Supplemental Direct, p. 2 and 11.

⁵⁴ Ex. 6, Messamore Supplemental Direct, p. 12.

⁵⁵ Ex. 104, Luebbert Rebuttal, p. 47.

⁵⁶ Ex. 106, Young Rebuttal, p. 4.

55. These PTCs are not currently available, or available at reduced rates, in projects which will go into service in future years.⁵⁷

56. EMW admits it is willing to operate Persimmon Creek to sell power to SPP even at a negative price for a period of time in order to get the tax benefit of the PTCs and RECs.⁵⁸

57. Staff's analysis indicates that Persimmon Creek's negative LMP has been increasing since the facility started operation. In 2022, Persimmon Creek had negative LMP in real-time and the day-ahead market 32% and 24% of the time, respectively.⁵⁹

58. EMW's current rates are based on an annualized/normalized income tax expense and include \$0 for PTC tax benefits. PTCs claimed in between rate cases are not captured by any existing trackers, riders, or other rate mechanisms.⁶⁰ EMW has indicated that it expects PTCs received between Persimmon Creek's acquisition and its addition to rate base will be allocated for shareholders to offset regulatory lag.⁶¹

59. The Commission issues its ratemaking decisions to strike an appropriate balance between all stakeholders after considering all relevant factors. These cost recovery mechanisms will be before the Commission while it is considering what is just and reasonable in EMW's next rate case. The tracking of the PTCs accrued on EMW's books would make them available for the Commission's consideration in EMW next rate case.⁶²

⁵⁷ Ex. 3, Messamore Direct, p. 5; Ex. 1, Dority Direct, p. 8; and Ex. 5, Humphrey Direct, pp. 6-7.

⁵⁸ Tr. pp. 78, 130-131, and 472.

⁵⁹ Ex. 104, Luebbert Rebuttal, p. 28.

⁶⁰ Ex. 106, Young Rebuttal, p. 4.

⁶¹ Ex. 7, Dority Surrebuttal, p. 26; Ex. 8, Humphrey Surrebuttal, p. 13; and Tr. p. 22.

⁶² Ex. 106, Young Rebuttal, p. 5.

60. After the PTCs expire there would be no financial reason to continue to operate Persimmon Creek at a negative Locational Marginal Price (LMP).⁶³

61. On December 6, 2022, EMW's new rates went into effect following its most recent general rate case.⁶⁴ EMW must file its next rate case as required by its participation in the fuel adjustment clause (FAC) in the next one to three years.⁶⁵

Levelized Cost of Energy

62. The primary financial evaluation methodology was the anticipated levelized cost of energy (LCOE) for each project.⁶⁶ An LCOE is an estimate of the revenue required per MWh generated to break even on an investment.⁶⁷ The LCOE takes into account total construction cost, time of progress payments, property taxes and tax incentives, internal labor, net capacity factor, depreciable life, anticipated operations and O&M, and other variables to determine a levelized cost of each megawatt hour of generation over the project life.⁶⁸

63. A LCOE analysis does not consider the time of day energy is generated, when comparing generation options.⁶⁹

64. The LCOE is not a perfect metric because it does not account for a lot of variables that will ultimately matter for the economics of Persimmon Creek.⁷⁰

⁶³ Tr. pp. 62 and 434.

⁶⁴ File No. ER-2022-0130, *In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement A General Rate Increase for Electric Service*.

⁶⁵ Tr. p. 63.

⁶⁶ Ex. 5, Humphrey Supplemental Direct, p. 7.

⁶⁷ Ex. 104, Luebbert Rebuttal, p. 40.

⁶⁸ Ex. 5, Humphrey Supplemental Direct, p. 7; and Ex. 104, Luebbert Rebuttal, p. 40.

⁶⁹ Tr. p. 435.

⁷⁰ Tr. p. 440.

65. EMW's fixed costs of generation units are not reflected in the day-ahead or real-time LMP. The dispatch of generation units in SPP is based on short-run marginal costs.⁷¹

66. Variable renewable project viability depends on the energy and market values being sufficient to cover the LCOE. Staff's position is that this is not the case for Persimmon Creek.⁷²

PISA

67. The Renewable Energy Standard Rate Adjustment Mechanism (RESRAM), property tax tracker, and Plant in Service Accounting (PISA) mechanisms ensure that cost increases are captured and deferred between rate cases so that the utility can recover the deferred costs from ratepayers in the future.⁷³

68. EMW's predecessor, KCP&L Greater Missouri Operations Company elected to make the deferrals required under the terms of Section 393.1400.5, RSMo, through a notice filed with the Commission on December 31, 2018.⁷⁴

69. PISA allows EMW to defer 85% of Persimmon Creek's depreciation expense, with carrying costs, until the asset can be reflected in a general rate case.⁷⁵

70. The energy generated by Persimmon Creek will flow to EMW's customers and revenues from energy sales will be included in EMW's Fuel Adjustment Clause (FAC) once the CCN is approved and the purchase transaction is closed even though the return

⁷¹ Tr. pp. 453-456.

⁷² Tr. p. 437.

⁷³ Ex. 106, Young Rebuttal, p. 5.

⁷⁴ File No. EO-2019-0045, *Notice*, (filed Dec. 31, 2018).

⁷⁵ Ex. 106, Young Rebuttal, pp. 3-4; and Ex. 7, Dority Surrebuttal, p. 13.

and expenses associated with Persimmon Creek will not be reflected in rates until EMW's next rate case. PISA deferrals will also be recoverable in the next rate case.⁷⁶

Net Capacity Factor

71. EMW claimed the historical average net capacity factor of Persimmon Creek during its four years of operation was 50.5%.⁷⁷ EMW's analysis of net capacity factor going forward, looked at all the remaining 16 years of the expected life of Persimmon Creek but did not account for lower levels of generation after the expiration of the PTCs.⁷⁸

72. Staff's presentation of the annual historical net capacity factor shows an annual declining trend.⁷⁹

73. Staff's analysis of the estimated historical capacity of Persimmon Creek, assuming curtailment during periods of negative LMPs, is representative of expected generation once PTCs expire. The table summarizing Staff's analysis has capacity factors substantially lower than those used by EMW in its modeling.⁸⁰

74. After the PTCs expire, Staff's analysis indicates that the historical average revenue/MWh does not meet the revenue requirement/MWh for Persimmon Creek.⁸¹

75. A capacity factor is the selling of all energy produced. However, in reality the utility uses some of that energy for internal services at the plant. A net capacity factor is what actually goes on the grid. The net capacity factor, therefore, is a percentage of the full capability that is actually produced.⁸²

⁷⁶ Tr. pp. 443-446; and Ex. 14, Reply of Evergy Missouri West to Public Counsel's Response to Application.

⁷⁷ Ex. 1, Dority Direct, pp. 8-9.

⁷⁸ Tr. p. 474; and Ex. 104, Luebbert Rebuttal, pp. 36-37.

⁷⁹ Ex. 104 and 104C, Luebbert Rebuttal, p. 36 (the numbers in the table are "confidential");

⁸⁰ Ex. 104C, Luebbert Rebuttal, p. 37 (the numbers in the table are "confidential"); and Tr. pp. 472-474.

⁸¹ Ex. 104C, Luebbert Rebuttal, p. 42 (the numbers are "confidential").

⁸² Tr. p. 124.

76. The number of hours when negative prices have occurred at the Persimmon Creek generation node has increased every year. As soon as the PTCs expire, EMW will have no financial incentive to produce at negative prices and production will decrease from that point on.⁸³

Hedging

77. Persimmon Creek has historically produced more energy during the overnight hours when EMW's load is relatively low. Conversely, the amount of energy produced by Persimmon Creek is relatively low during the periods of time when EMW's load is relatively high.⁸⁴

78. Persimmon Creek is unlikely to provide a good hedge against high market costs to serve load because it is not dispatchable and because of its history of low energy production during the periods of highest demand and highest market prices.⁸⁵

79. Wind resource generation is not available based on customer load or market prices. It is only available when the wind is blowing. Typically, when the wind is blowing, there is a lot of wind generation available to the SPP market. An abundance of supply from wind generation drives market prices down. In such circumstances, Persimmon Creek would not serve as an effective hedge because it would not be producing much, if any, revenue for its owner.⁸⁶

⁸³ Tr. p. 472-474.

⁸⁴ Ex. 104, Luebbert Rebuttal, p. 13.

⁸⁵ Ex. 104, Luebbert Rebuttal, pp. 12-13 and 47-49; Ex. 201, Mantle Surrebuttal, pp. 6-7; and Tr. pp. 457 and 491.

⁸⁶ Ex. 201, Mantle Surrebuttal, p. 6.

80. Purchasing Persimmon Creek to hedge against market prices is not an efficient use of customers' money because it would typically produce revenues at times when market prices are low.⁸⁷

Other Benefits of Persimmon Creek

81. EMW has set a goal to achieve net-zero CO₂ emissions by 2045, with an interim goal of a 70% reduction in such emissions from 2005 levels by 2030.⁸⁸

82. Persimmon Creek's resources would provide a diversified energy resource for EMW in terms of type of generation and ownership structure.⁸⁹

83. Persimmon Creek was chosen as a result of a competitive RFP process designed specifically for wind generation resources. Persimmon Creek had the lowest LCOE of all the projects submitted under the RFP.⁹⁰

84. Persimmon Creek is less risky from a permitting and supply chain perspective because it is already built and has been operational for the past four years.⁹¹

85. Wind resources, including Persimmon Creek, could help EMW meet its current need for an economic energy source while providing some accredited capacity towards meeting EMW's need for capacity by 2024.⁹²

86. During Persimmon Creek's four years of operation, it had the lowest congestion risk for delivery to EMW's customers of the projects submitted in the RFP.⁹³

⁸⁷ Ex. 201, Mantle Surrebuttal, p. 7.

⁸⁸ Ex. 1, Dority Direct, pp. 9-10.

⁸⁹ Ex. 1, Dority Direct, p. 8-10.

⁹⁰ Ex. 5, Humphrey Supplemental Direct, p. 26.

⁹¹ Ex. 1, Dority Direct, pp. 8-9; and Ex. 5, Humphrey Supplemental Direct, p. 19.

⁹² Ex. 6, Messamore Supplemental Direct, p. 2 and 11.

⁹³ Ex. 1, Dority Direct, pp. 8-9.

87. Wind generation helps corporations in Missouri perform more competitively, as there is an emergence of corporate customer interest in renewable energy and corporations are seeking increased access to renewable power.⁹⁴

88. The Commission has previously recognized benefits that renewable generation provides to the public such as the public's interest in improving the environment and reducing the amount of carbon dioxide released into the atmosphere.⁹⁵

89. Additionally, the Commission has previously recognized the public policy of the state to diversify energy supply to support renewables.⁹⁶

Wildlife

90. EMW is aware of the risk of future wildlife mitigation efforts in Oklahoma. A post-commercial operation facility monitoring study conducted in 2018-2019 showed higher rates of bat mortality were observed, but no additional action was taken by the Oklahoma Department of Wildlife and Conservation. Persimmon Creek has continued to operate since 2018 and no wildlife mitigation actions have been proposed.⁹⁷ No further study has been done.⁹⁸

91. This study was provided and warned about the slight possibility of wildlife mitigation in the form of an Incidental Take Permit (ITP) or a Habitat Conservation Plan

⁹⁴ File No. EA-2019-0010, *Report and Order*, (issued June 19, 2019), p. 21.

⁹⁵ File No. EA-2019-0010, *Report and Order*, (issued June 19, 2019), p. 32 (citing Sections 393.1025 and 393.1030 [Renewable Energy Standard]; and Section 393.1075 [Missouri Energy Efficiency Investment Act]).

⁹⁶ File No. EA-2019-0010, *Report and Order*, (issued June 19, 2019), p. 32 (citing Sections 393.1025 and 393.1030 [Renewable Energy Standard]; and Section 393.1075 [Missouri Energy Efficiency Investment Act]).

⁹⁷ Tr. p. 128; Ex. 8 and 8C, Humphrey Surrebuttal, pp.8-9. See also for additional details, Ex. 5 and 5C, Humphrey Supplemental Direct, Schedule 10 (Confidential), p. 29, and 31-32.

⁹⁸ Tr. p. 127.

(HCP).⁹⁹ Currently, Persimmon Creek is in compliance with all environmental regulations and has been during its four-year operation.¹⁰⁰

92. Staff provided confidential evidence of similar environmental concerns as those created by the location of Persimmon Creek that have resulted in significant operational changes to a generation facility and additional expenses.¹⁰¹

Proposed Conditions

93. Staff recommends that, if the certificate is granted, any monies lost due to the loss of PTCs or market energy sales related to curtailment, and upgrades required for resource adequacy and wildlife mitigation efforts be borne by shareholders.¹⁰²

94. OPC requests that the Commission order EMW to track Persimmon Creek revenues so that this information is available to the Commission and other parties for ratemaking purposes.¹⁰³

95. Staff also recommends that if a CCN is granted that the Commission order the in-service criteria contained in Shawn Lange's rebuttal testimony at Schedule SEL-R2 be used to determine if the facility is fully operational and used for service.¹⁰⁴

III. Conclusions of Law

A. EMW is an "electric corporation" and a "public utility," as those terms are defined by Section 386.020, RSMo. As such, EMW is subject to the jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

⁹⁹ Ex. 8 and Ex. 8C, Humphrey Surrebuttal, p. 9; and Ex. 7, Dority Surrebuttal, p. 17.

¹⁰⁰ Ex. 7, Dority Surrebuttal, p. 20.

¹⁰¹ Ex. 103C, Lange Rebuttal, p. 6.

¹⁰² Tr. p. 128; Tr. p. 97 (*In Camera*); Tr. p. 112 (*In Camera*); and Tr. p. 357-359 (*In Camera*).

¹⁰³ Ex. 201, Mantle Surrebuttal, p. 2

¹⁰⁴ Ex. 103, Lange Rebuttal, Schedule SEL-r2

B. Section 393.170.1, RSMo 2000, provides, in part, that “[n]o . . . electrical corporation . . . shall begin construction of a . . . electric plant . . . without first having obtained the permission and approval of the commission.”

C. Section 393.170.3, RSMo 2000 provides that:

[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. . . .”

D. Section 393.170, RSMo, sets the legal standard by which the Commission must determine whether to grant EMW the certificate of convenience and necessity it seeks. In interpreting the meaning of that legal standard in a 1993 decision, the Missouri Court of Appeals said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is ‘necessary or convenient for the public service’ (*citing* section 393.170.3). The term ‘necessity’ does not mean ‘essential’ or absolutely indispensable’, but that an additional service would be an improvement justifying its cost (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2nd at 219). . . . Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (*Citing State ex rel. Ozark Elec. Coop. v. Public Serv. Comm’n*, 527 S.W.2d 390, 392 (Mo. App. 1975)).¹⁰⁵

E. Commission Rule 20 CSR 4240-20.045 requires an electric corporation to obtain a CCN prior to operating “[a]n electric generating plant . . . that is expected to serve Missouri customers and be included in the rate base used to set their retail rates regardless of whether the item(s) to be constructed or operated is located inside or outside the electric utility’s certificated service area or inside or outside Missouri[.]”

¹⁰⁵ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2nd 593, 597-598 (Mo. App. W.D. 1993).

F. In evaluating applications for certificates of convenience and necessity, the Commission has frequently considered five factors first described in a Commission decision regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company.¹⁰⁶ The *Tartan* factors, as they have become known, are: “(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.”¹⁰⁷

G. While the *Tartan* factors are frequently cited in Commission decisions regarding applications for certificates of convenience and necessity, they are merely guidelines for the Commission’s decision, and are not part of the legal standard set forth by the controlling statute. Moreover, the *Tartan* decision concerned an application for a certificate to provide natural gas service to a particular service area. As a result, the described factors are not precisely applicable to EMW’s applications to construct the Wind Projects. Nevertheless, they provide some guidance and are specifically referenced in the list of issues set forth by the parties for resolution by the Commission.

H. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.¹⁰⁸ The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.¹⁰⁹

¹⁰⁶ *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173 (1994).

¹⁰⁷ *Tartan Energy*, at 177.

¹⁰⁸ Sections 393.1025 and 393.1030 (Renewable Energy Standard); and Section 393.1075 (Missouri Energy Efficiency Investment Act).

¹⁰⁹ *See, In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092, Report and Order, p. 20 (MoPSC July 11, 2018) (citing to Report

I. Subdivision 393.1400.2.(1), RSMo, which is referred to as the Plant in Service Accounting (PISA) statute, states:

Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and the amortization of regulatory asset balances that arose under this section prior to such expiration.

J. Subdivision 393.1400.2.(2), which is referenced in subdivision 393.1400.2.(1), states:

The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

K. Per 20 CSR 4240-22.010(2), "the fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services

and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, April 24, 2013, pp. 14-15; Report and Order, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, March 2, 2016, pp. 15-16; Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, File No. EA-2016-0208, December 21, 2016, pp. 19-20).

that are safe, reliable, and efficient, at just and reasonable rates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.”

L. The PISA statute does not allow for immediate recovery of depreciation expense and return. Instead, those amounts are to be deferred in a regulatory asset for recovery in rates that will be established in a subsequent general rate case. The PISA statute applies to all depreciation expense and return associated with qualifying electric plant.

M. Subsection 393.1400.5, RSMo, which is also referenced in Subdivision 393.1400.2.(1), RSMo, indicates the PISA statute applies only to an electrical corporation that files notice with the Commission of its intent to be subject to that statute. As the Commission found in Finding of Fact No. 63, EMW has chosen to be subject to the PISA statute.

IV. Decision

EMW requests permission, approval, and a certificate of convenience or necessity to purchase, own, acquire, construct, operate, control, manage, and maintain an existing wind generation facility in Oklahoma (Persimmon Creek). Traditionally, in determining whether a certificate is “necessary or convenient for the public service,” the Commission looks to five criteria referred to as the *Tartan* factors.¹¹⁰ The *Tartan* factors contemplate: (1) the need for service, (2) the utility’s qualifications, (3) the utility’s financial ability, (4) the feasibility of the proposal, and (5) promotion of the public interest.

After reviewing all the evidence and arguments of the parties, the Commission determines that the certificate should be granted but with the condition that the ratepayers

¹¹⁰ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173 (issued September 16, 1994).

and the shareholders share equally any costs that exceed market revenues, off system sales and the market value of the energy that serves EMW's customer load associated with owning and operating Persimmon Creek, including but not limited to those related to PISA treatment and any required wildlife mitigation that exceeds the ratepayer realized revenues and ratepayer realized tax benefits as explained further below.

The Tartan Factors

Two of the five factors need not be considered further. There is no dispute that EMW is qualified to own and operate Persimmon Creek. There is also no dispute that EMW is capable of financing the purchase of Persimmon Creek. However, Staff and OPC do object to granting the certificate arguing there is not a need for this particular energy facility which would produce energy at the wrong time to serve EMW's customers and would not be economically feasible for the captive ratepayers after the expiration of the PTCs. EMW and Renew Missouri argue that there is a need to provide more renewable energy to EMW's customers and the state of Missouri and that Persimmon Creek is an economical resource as shown by its low LCOE when compared to other generation facilities EMW examined through its RFP.

The Need for Service

The first issue (and first Tartan factor) centers around the "need" for Persimmon Creek. EMW proposes to acquire Persimmon Creek arguing that it will help meet its current need for an economic energy source and to provide part of the accredited capacity it will need by 2024. EMW argues that Persimmon Creek's generation portfolio is consistent with the Preferred Plan of its IRP and that this shows that Persimmon Creek will provide benefits to customers. EMW also argues that Persimmon Creek would be a valuable resource addition because of its long-term low-cost energy, its renewable

capacity, and that EMW will own the generating asset. EMW's evidence centers on its argument that the IRP options and results show that the addition of Persimmon Creek to its generation fleet is projected to reduce customer costs through long-term, low-cost energy and capacity.

Staff and OPC objected to granting the CCN based on need. They presented evidence that EMW's customers do not need Persimmon Creek because it is uneconomic, inefficient, and carries other risks and issues that EMW does not appear to consider (such as potential wildlife mitigation issues).

Staff also argued that the corporate renewable energy goals of EMW should not be misconstrued as a need which will be paid for by all EMW ratepayers, unless that goal can be fulfilled without financial harm to the ratepayers. The evidence also showed that due to EMW's participation in SPP, EMW will be responsible for market energy costs to serve the load of ratepayers regardless of the acquisition of Persimmon Creek. Staff and OPC presented evidence that Persimmon Creek is unlikely to provide a good hedge against high market costs to serve load due to the historically low energy production during the periods of highest demand and highest market prices. Ultimately, Staff's and Public Counsel's positions are that this project is uneconomic for ratepayers and places unnecessary risk on the ratepayers for the benefit of the shareholders.

Staff Witness Fortson testifies that the "capacity need" is not supported by the IRP as alleged by EMW. Staff's and OPC's testimony suggests that EMW manipulated the IRP process, by the resources it input to the evaluations, to show that Persimmon Creek will be advantageous to the ratepayers, when in reality the energy provided will not match the energy needed. The evidence clearly showed that Persimmon Creek will not generate

much energy during the peak summer months when that energy is needed most by EMW's ratepayers.

Staff's evidence showed that ten of the eleven Alternative Resource Plans EMW used in completing its IRP included 150 MW of renewable wind resources for 2024. Thus, the inclusion of a generic wind resource was essentially a foregone conclusion in the June 2022 IRP Update. Staff further argues that none of the integrated resource analysis done by EMW actually considers the specific characteristics of Persimmon Creek. Rather the Preferred Plan included the virtually certain selection of generic wind resources, and the Updated Preferred Plan assumed the acquisition of a wind resource named Persimmon Creek, but was modeled without Persimmon Creek's key characteristics.

In summary, the evidence shows that EMW has a need for accredited capacity in 2024, and that Persimmon Creek could meet at least a small portion of this need, even though there is a strong possibility that the energy produced at Persimmon Creek will not actually be available when EMW customers need that energy.

Economic Feasibility

The next question is whether the costs associated with the project are reasonable given the minor capacity gains it would afford, that is, is the project economically feasible? EMW's evidence regarding economic feasibility centered on its argument that Persimmon Creek is a high net capacity factor wind generation from western Oklahoma. As such, EMW argued that it is one of the cheapest forms of renewable energy in the United States. EMW relies heavily on its RFP process that was conducted because its Preferred Plan showed the need for 150 MW of wind generation. The RFP considered both building new projects and purchasing existing projects. Persimmon Creek was selected because it had the lowest LCOE of all projects in the RFP.

EMW also points out that Persimmon Creek is attractive, compared to the alternative projects in the RFP, from a permitting and supply chain perspective. Because Persimmon Creek is already operating, it also has the lowest congestion risk for delivery of energy to Missouri customers. Further, EMW presented testimony that Persimmon Creek is one of the most advanced and efficient wind generating facilities now in operation.

Staff and OPC argued that the proposed operation of Persimmon Creek is not economically feasible and, therefore, does not promote the public interest. OPC and Staff noted that EMW intends to take possession and begin operating Persimmon Creek before its costs are included in rates, potentially several years before rate recovery, which is one to three years away. As proposed by EMW, during the time between the closing on Persimmon Creek and when it will be incorporated into rates, the PISA statute will protect EMW shareholders from 85% of the regulatory lag associated with the \$246 million purchase price because EMW will defer 85% of the depreciation and associated return until the wind farm is included in rate base. After it is included in rate base, EMW shareholders will recover 100% of depreciation and return associated with the Persimmon Creek acquisition.¹¹¹ Thus, the PTCs from Persimmon Creek would initially benefit only EMW shareholders, and not ratepayers, because these items will not be included in the calculation of EMW's revenue requirement until after the next rate case. This creates an imbalanced benefit for EMW shareholders in that the ratepayers will be required to pay higher rates in the future for this deferred depreciation and return, but EMW has not proposed to also defer the PTCs that will be realized in the initial years.

¹¹¹ Section 393.1400.2(1), RSMo.

EMW also claimed that Persimmon Creek had an operational aggregate net capacity factor of approximately 50% over the past four years. Staff presented evidence that EMW's net capacity factor was significantly overestimated due to the likelihood of negative LMP prices continuing after the PTCs expire. Staff showed that, given the historically negative pricing at the Persimmon Creek SPP node, once the PTCs expire it would be uneconomic for Persimmon Creek to generate when a negative LMP price occurs at the node.

To determine the economic feasibility of Persimmon Creek, the Commission has to consider those benefits presented by EMW showing that Persimmon Creek will result in net benefits to shareholders and ratepayers, as well as Staff and OPC's evidence regarding the plant operational data, knowledge of wildlife concerns, PISA treatment, and the impact of PTC expiration. This renewable energy project will generate power and is generally one of the cheapest forms of renewable energy in the U.S. However, when reviewing the economic feasibility of the project the Commission must evaluate the benefits and risks. As discussed further in the Conditions set out below, the Commission finds that Persimmon Creek is economically feasible only where certain risks associated with the continued operation of this facility are captured and tracked to review in a future rate case and equally shared between the ratepayers and shareholders. Here, the risks associated with Persimmon Creek include wildlife protection (that may not materialize), operational concerns regarding timing of generation, PTC expiration, and other accounting treatment and deferrals.

Based on the evidence presented, Persimmon Creek is likely to be economically feasible to the ratepayers through the expiration of the PTCs (after ten years of operation)

provided the tax credit benefits of the PTCs are tracked from the time Persimmon Creek is purchased until it can be included in rate base.

The Commission agrees with Staff and OPC that under EMW's proposal once the PTCs expire a substantial risk remains that the captive ratepayers will bear the cost of a generating resource that does not produce energy when the customers actually need it and may be an uneconomic means of adding accredited capacity or hedging market energy costs. Where other benefits exist, some risk of Persimmon Creek resulting in additional costs is acceptable; however, the ratepayers should not bear all the risks. The risks associated with operation of Persimmon Creek can be mitigated where potential benefits and costs are shared between shareholders and ratepayers, as set out in the Conditions below.

Promote the Public Interest

Staff and OPC argue that as proposed by EMW, virtually all risks for the failure of the project to perform as assumed will fall on ratepayers. Meanwhile, EMW is insulated from not only those risks of failure to perform, because it will collect PTCs and then roll the cost of the project into rate base, but also because the cost associated with regulatory lag will be deferred because of its PISA election. The Commission agrees that deciding to move forward with the acquisition based upon the results of a flawed IRP analysis introduces unnecessary risk for ratepayers. Additionally, Staff and OPC presented convincing evidence that Persimmon Creek carries the risk of negative impact to wildlife in its immediate surroundings and that risk has not been properly accounted for in EMW's analyses.

There are benefits to adding Persimmon Creek to EMW's generation assets. Persimmon Creek will add some geographic and generation diversity to EMW's generation resources. It will also add some accredited capacity to EMW's portfolio, if not the actual energy needed at the time the ratepayers need it. Also, by purchasing an already built facility, supply chain issues and other uncertainties are eliminated. Further, additional wind generation helps corporations in Missouri perform more competitively, as there is an emergence of corporate customer interest in renewable energy and corporations are seeking increased access to renewable power. The Commission has previously recognized that renewable generation provides other benefits to the public such as promoting the public's interest in improving the environment and reducing the amount of carbon dioxide released into the atmosphere.¹¹² Additionally, the Commission has previously recognized the public policy of the state to diversify energy supply to support renewable generation.¹¹³ Even so, these benefits cannot completely outweigh the risks to the ratepayers as proposed by EMW. Therefore, the Commission finds it necessary to condition the grant of a certificate on some added protection for those captive ratepayers. The benefits in conjunction with the conditions, outlined below, promote the public interest.

Conditions

In order to protect the ratepayers from assuming all the risks that Persimmon Creek will not provide the needed energy or capacity, the Commission finds certain conditions are reasonable and necessary for the grant of the certificate to own

¹¹² File No. EA-2019-0010, *Report and Order*, p. 32 (citing Sections 393.1025 and 393.1030 [Renewable Energy Standard]; and Section 393.1075 [Missouri Energy Efficiency Investment Act]).

¹¹³ File No. EA-2019-0010, *Report and Order*, p. 32 (citing Sections 393.1025 and 393.1030 [Renewable Energy Standard]; and Section 393.1075 [Missouri Energy Efficiency Investment Act].)

and operate Persimmon Creek. First, any costs associated with owning and operating Persimmon Creek, including but not limited to those related to PISA treatment and any required wildlife mitigation, that exceed the ratepayer realized market revenues including the market value of energy serving EMW's customer load and ratepayer realized tax benefits shall be shared equally between EMW shareholders and ratepayers. To accomplish this, all PTCs EMW recognizes for income tax purposes related to Persimmon Creek shall be tracked and credited to ratepayers in future rate proceedings and included in the rate payer realized tax benefits. Further, EMW shall track all revenue derived from the operation of Persimmon Creek including the market value of energy serving EMW's customer load.

In order to determine a sharing of costs, EMW must first be able to track the benefits occurring from Persimmon Creek generation, whether revenues or avoided purchased power costs. Thus, Eversource shall track all Persimmon Creek generation and corresponding energy pricing, and whether energy purchases or sales occurred in meeting EMW load requirements.

The Commission will direct its Staff to work with EMW in developing reporting in appropriate formats that will allow a determination of costs and benefits associated with Persimmon Creek. The reporting shall include access to source documents including SPP invoices that allow Staff on a quarterly basis to validate the reporting. The initial cost and benefit report form shall be filed in this case within 90 days of any closing on Persimmon Creek. The cost and benefit reports shall be provided as set out in the ordered paragraphs below. OPC shall also have access to the reporting.

The Commission will further direct its Staff to maintain a report of the cumulative costs and benefits of Persimmon Creek from the date it is included in EMW's fleet so that

the report can be reviewed in EMW's next rate case. Additionally, EMW shall track all expenses related to the operation of Persimmon Creek. EMW shall provide a document containing the calculation of any Persimmon Creek related PTCs that are used for consolidated income tax purposes on an annual basis. A listing of source documents used in calculating the PTCs shall also be included. This information shall be provided through on an annual basis as set out below.

EMW or any other party may propose modifications to or the elimination of these tracking requirements and/or the sharing mechanism set out in this order in the first general rate proceeding filed after the expiration of the PTCs related to Persimmon Creek or at any time following an event that materially effects the revenues derived from, or costs associated with, the operation of Persimmon Creek.

The Commission does not find any other proposed conditions to be reasonable or necessary. With the above reasonable and necessary conditions, the Commission finds that granting EMW a certificate to operate Persimmon Creek is reasonable and in the public interest. The Commission also finds it reasonable to make this report and order effective in less than 30 days to avoid potential adverse commercial consequences that could be caused by a delay in issuing this decision.

THE COMMISSION ORDERS THAT:

1. EMW is authorized to acquire and is granted a certificate of convenience and necessity to own, operate, maintain, and otherwise control and manage Persimmon Creek with the conditions set out below.

2. The certificate of convenience and necessity for Persimmon Creek is conditioned on:

- a. Any costs associated with owning and operating Persimmon Creek, including but not limited to those related to PISA treatment and any required wildlife mitigation, that exceed the ratepayer realized market revenues and ratepayer realized tax benefits shall be shared equally between EMW shareholders and rate payers including the market value of energy serving EMW customers.
- b. All PTCs EMW recognizes for income tax purposes related to Persimmon Creek shall be tracked and credited to rate payers in future rate proceedings and included in the rate payer realized tax benefits.
- c. EMW shall track all revenue derived from the operation of Persimmon Creek. In order to determine a sharing of costs, EMW must first be able to track the benefits occurring from Persimmon Creek generation, whether revenues or avoided purchased power costs.
- d. EMW shall track all Persimmon Creek generation and corresponding market energy pricing at the corresponding time, and energy purchases or sales occurring at the corresponding time in meeting EMW load requirements.
- e. Staff shall work with EMW in developing reporting formats that will allow a determination of costs and benefits associated with Persimmon Creek. The reporting shall include access to source documents including SPP invoices that allow Staff on a quarterly basis to validate the reporting. The initial cost and benefit report form shall be filed in this case within 90 days of any closing on Persimmon Creek.

- f. The cost and benefit reports shall be provided through EFIS as non-case related submissions on a quarterly basis not later than 60 days after the end of the quarter. OPC shall also have access to information when reported. Staff shall maintain a report that can be reviewed in EMW's next rate case of the cumulative costs and benefits of Persimmon Creek from the date it is included in EMW's fleet.
 - g. EMW shall track all expenses related to the operation of Persimmon Creek. EMW shall provide a document containing the calculation of any Persimmon Creek related PTCs that are used for consolidated income tax purposes on an annual basis. A listing of source documents used in calculating the PTCs shall also be included. This information shall be provided through EFIS as a non-case related submission on an annual basis within 60 days of the filing of EMW's federal income taxes with the Internal Revenue Service.
- 3. EMW or any other party may propose modifications to or the elimination of the tracking requirements and/or the equal sharing mechanism set out in this order in the first general rate proceeding filed after the expiration of the PTCs related to Persimmon Creek or at any time following an event that materially effects the revenues derived from, or costs associated with, the operation of Persimmon Creek.
- 4. EMW is authorized to do and perform, or cause to be done and performed all such acts and things, as well as make, execute, and deliver any and all documents as may be necessary, advisable, and proper to the end that the intent and purposes of the approved transactions may be fully effectuated.
- 5. This report and order shall become effective on April 16, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, and Holsman CC.,
concur and certify compliance with the
provisions of Section 536.080, RSMo (2016).
Kolkmeier, C., dissents.

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for a Certificate of Convenience and	)	
Necessity for a Solar Facility, Approval of a	)	<u>File No. EA-2022-0245</u>
Subscription-Based Renewable Energy	)	
Program, and Authorization to Establish	)	
Tracking Mechanism	)	

REPORT AND ORDER

CERTIFICATES

§21. Grant or refusal of certificate generally

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.1. Public interest

§42. Electric and power

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§42. Electric and power

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§42. Electric and power

The Commission approved an electric utility's application for a Certificate of Convenience and Necessity for a solar facility.

ELECTRIC**§3. Certificate of convenience and necessity**

The Commission approved an electric utility's application for a Certificate of Convenience and Necessity for a solar facility.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§3. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§9. Jurisdiction and powers of the State Commission**§13.1. Energy Efficiency****§42. Planning and management**

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

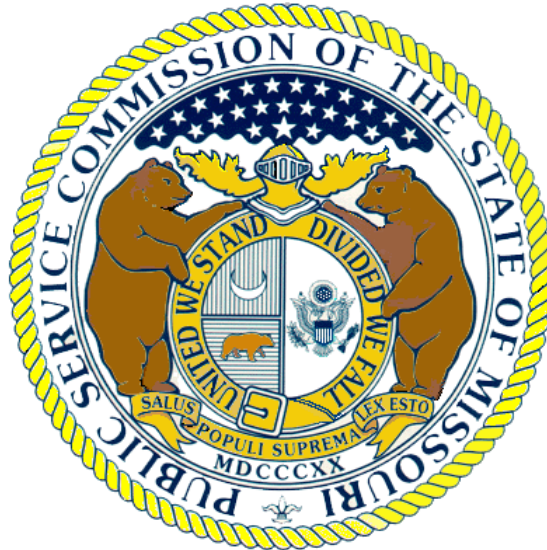
EVIDENCE, PRACTICE AND PROCEDURE**§9. Particular kinds of evidence generally**

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

RATES**§3. Jurisdiction and powers of the State Commission****§62. Initiation of rates and rate changes**

The Commission has general authority to review any new tariffed programs and associated charges.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Union)
Electric Company d/b/a Ameren Missouri)
for a Certificate of Convenience and)
Necessity for a Solar Facility, Approval of a)
Subscription-Based Renewable Energy)
Program, and Authorization to Establish)
Tracking Mechanism)

File No. EA-2022-0245

Tracking No. YE-2023-0010

REPORT AND ORDER

Issue Date: April 12, 2023

Effective Date: April 22, 2023

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for a Certificate of Convenience and	)	<u>File No. EA-2022-0245</u>
Necessity for a Solar Facility, Approval of a	)	Tracking No. YE-2023-0010
Subscription-Based Renewable Energy	)	
Program, and Authorization to Establish	)	
Tracking Mechanism	)	

PARTIES & APPEARANCES

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REGULATORY LAW JUDGE: Kenneth J. Seyer

REPORT AND ORDER

I. Procedural History

On July 14, 2022, Union Electric Company d/b/a Ameren Missouri (“the Company”) filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN). The CCN would authorize Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a 150 megawatt (MW) solar generation facility, located in White County, Illinois (referred to as the “Boomtown Solar Project” or “Project”) pursuant to a Build Transfer Agreement (BTA) with Boomtown Solar Holdings LLC.

In its application, the Company also asked for approval of a new subscription-based renewable energy program for commercial, industrial, and governmental customers, called the Renewable Solutions Program (RSP). Tariff sheets to implement the RSP, Tracking No. YE-2023-0010, bearing an effective date of May 1, 2023, were filed on July 14, 2022.

Renew Missouri Advocates d/b/a Renew Missouri, Sierra Club, Walmart, Inc., and Missouri Industrial Energy Consumers (MIEC) were granted intervention. The Commission ordered a procedural schedule. A hearing was set and written direct, supplemental direct, rebuttal, and surrebuttal testimony were filed.

The evidentiary hearing in this matter was held February 6-7, 2023. During the evidentiary hearing, the parties presented evidence relating to the following issues identified by the parties:

- 1. Does the evidence establish that the Boomtown Solar Project is necessary or convenient for the public service? Should the Commission find that the Project satisfies the five *Tartan* factors?**

2. If the Commission grants the CCN for the Boomtown Solar Project, what conditions if any, should the Commission impose on the CCN?

3. Is this an appropriate proceeding for the Commission to review Ameren Missouri's Renewable Solutions Program (RSP)? If so, should the Commission approve the RSP proposed by Ameren Missouri in accordance with its authority to approve utility programs and tariffs?

4. If the Commission approves the Renewable Solutions Program (RSP) proposed by Ameren Missouri, what, if any, conditions should the Commission impose on such approval?

Initial post-hearing briefs were filed on March 3, 2023, and reply briefs were filed March 17-18, 2023.

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Union Electric Company is a Missouri corporation doing business under the fictitious name of Ameren Missouri, with its principal office and place of business located at One Ameren Plaza, 1901 Chouteau Ave., St. Louis, Missouri 63103.¹ The Company is engaged in providing electric utility services under the jurisdiction of the Commission.²

2. Ameren Missouri currently provides electric utility service to approximately 1.2 million customers in Missouri.³ The Company has approximately 10,800 MW of

¹ File No. EA-2022-0245, *Application*, (filed July 14, 2022) ("Application"), p. 3.

² Application, p. 3; Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

³ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

generation capacity in operation, including solar, wind, hydro-electric, fossil, and nuclear technologies.⁴

3. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo,⁵ and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁶ Staff participated in this proceeding.

5. Renew Missouri, Sierra Club, Walmart, Inc., and MIEC are parties after being granted intervention.⁷

6. MIEC is a non-profit company that represents the interests of industrial consumers in Missouri utility matters.⁸ MIEC supports the granting by the Commission of a CCN for the Project.⁹

7. Sierra Club recommends that the Commission grant a CCN for the Project arguing that the Project economically meets Ameren Missouri's energy needs, reduces the risk of market energy and fossil fuel price volatility, and diversifies the Company's generation fleet.¹⁰

⁴ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

⁵ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

⁶ Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).

⁷ File No. EA-2022-0245, *Order Granting Applications to Intervene* (issued Aug. 30, 2022); *Order Granting Intervention* (issued Nov. 2, 2022).

⁸ Exh. 300, *Brubaker Direct Testimony*, p. 1.

⁹ Exh. 300, *Brubaker Direct Testimony*, p. 3.

¹⁰ Exh. 500, *Shenstone-Harris Surrebuttal Testimony*, p. 7.

8. Renew Missouri Advocates d/b/a Renew Missouri advocates for energy efficiency and renewable energy policy.¹¹ Renew Missouri recommends that the Commission grant a CCN for the Project.¹²

9. Walmart, Inc. has 52 stores and related facilities and one distribution center in Missouri that take electric service from Ameren Missouri. Walmart primarily receives service under the 3 (M) Large General Service class.¹³ Walmart supports approval of the RSP.¹⁴

10. The Inflation Reduction Act (IRA) was passed into law August 16, 2022.¹⁵

Boomtown Solar Project

11. In August of 2020, Ameren Missouri issued a request for proposals (RFP) for solar and wind generation projects that could begin producing energy during the period of 2022-2024 and under which the Company could acquire the solar or wind project companies through a BTA.¹⁶ In response to the RFP, 16 bidders submitted 51 project proposals with an aggregate capacity of approximately 9,000 MW.¹⁷ The Boomtown Solar Project resulting from the RFP process would be an addition to Ameren Missouri's generation portfolio.¹⁸

12. Under a BTA structure, a solar developer builds the project, but the ultimate owner has contractual rights both before and during construction to ensure that the project

¹¹ Exh. 600, *Owen Surrebuttal Testimony*, p. 3.

¹² Exh. 600, *Owen Surrebuttal Testimony*, p. 4.

¹³ Exh. 400, *Teague Rebuttal Testimony*, p. 2.

¹⁴ Exh. 400, *Teague Rebuttal Testimony*, p. 10.

¹⁵ Inflation Reduction Act of 2022 Pub. L. 117-169 (Aug. 16, 2022).

¹⁶ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 11.

¹⁷ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 11.

¹⁸ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 3.

is built to the ultimate owner's specifications and will otherwise meet the ultimate owner's needs.¹⁹

13. Pursuant to a BTA, the Project is being developed by Invenergy Renewables LLC (Invenergy) through a special purpose entity known as Boomtown Solar Energy LLC, a wholly-owned subsidiary of Boomtown Solar Holdings LLC.²⁰ Invenergy is a well-established renewable generation developer with over 24 gigawatts of wind and solar projects under operation, construction, or contract.²¹

14. The Project is a 150 MW photovoltaic solar-powered electric generating facility located in White County, Illinois anticipated to interconnect into the Midcontinent Independent System Operator, Inc. (MISO).²²

15. The solar panels installed as part of the facility have a 30-year useful life²³ with a 0.5% degradation of generating capacity per year.²⁴

16. After the Project is developed by Invenergy, Ameren Missouri will ultimately acquire it.²⁵

17. Staff's position is that Boomtown Solar Energy LLC is qualified to construct and install the Project, and that Ameren Missouri is qualified to own, maintain, and otherwise control and manage the Project.²⁶ OPC's position is that Ameren Missouri is qualified to build, own, operate, and maintain the Project.²⁷

¹⁹ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 5.

²⁰ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4; Schedule SW-D1, p. 1.

²¹ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4.

²² Exh. 10, *Wibbenmeyer Direct Testimony*, Schedule SW-D1, p. 1.

²³ Exh. 12, *Wills Surrebuttal Testimony*, p. 15.

²⁴ Tr. 174 (Forsberg).

²⁵ Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4.

²⁶ Exh. 103, *Hull Rebuttal Testimony*, p. 3.

²⁷ Exh. 200, *Marke Rebuttal Testimony*, p. 3.

18. Both Staff and OPC agree that Ameren Missouri has the financial ability to construct, operate, and maintain the Project.²⁸

Preferred Resource Plan

19. Ameren Missouri filed a 2020 Preferred Resource Plan (PRP) in its Triennial Integrated Resource Plan (IRP).²⁹ On June 22, 2022, the Company filed a change in the PRP (hereafter the “2022 PRP”).³⁰ The 2022 PRP includes the addition of 5,400 MW of wind and solar generation resources (including 700 MW of wind resources added in 2020-2021); the retirement of all coal-fired generation by 2042, including retirement of the Rush Island Energy Center by the end of 2025 and the Sioux Energy Center in 2030; and the addition of 1,200 MW of natural gas-fired combined cycle generation in 2031.³¹

20. Ameren Missouri sells all of the energy that it generates into the MISO grid and then purchases from MISO the energy it needs to meet its load.³² Historically, the Company has annually generated more electricity than is required to meet its customers’ load (at times, in excess of 10 million megawatt hours annually), allowing it to sell the excess generation to MISO and pass those revenues on to its ratepayers in the form of reduced rates.³³ Like Ameren Missouri, MISO has also historically maintained a positive buffer – that is, its members, as a group, have generated electricity beyond what its members’ customers have used each year. However, like Ameren Missouri, other MISO

²⁸ Exh. 107, *Won Rebuttal Testimony*, p. 3-4; Exh. 200, *Marke Rebuttal Testimony*, p. 3.

²⁹ Exh. 2, Michels Direct Testimony, Sch. MM-D2, p. 1, fn 1 (citing to File No. EO-2021-0021, *In the Matter of Union Electric Company d/b/a Ameren Missouri’s 2020 Utility Resource Filing Pursuant to 20 CSR 4240 – Chapter 22*).

³⁰ Exh. 3, Schedule MM-D2. File No. EO-2022-0362, *Notice of Change in Preferred Resource Plan*, filed June 22, 2022.

³¹ Exh. 3, *Michels Direct Testimony*, pp. 4-5.

³² Exh. 106, *Stahlman Rebuttal Testimony*, p. 2; Tr. 517 (Luebbert).

³³ Exh. 4, *Michels Surrebuttal Testimony*, p. 11.

members are also transitioning from dispatchable fossil-fuel resources to a much greater reliance on renewable resources.³⁴ Therefore, relying on the MISO market during peak system load periods becomes a riskier proposition than in the past.³⁵

21. When it comes to resource adequacy, the North American Reliability Corporation's (NERC's) 2022 Long-Term Reliability Assessment classifies MISO as a "high-risk" area, where "shortfalls may occur at normal peak conditions."³⁶ The report assesses MISO's anticipated capacity reserves as "alarmingly low," possibly falling below an acceptable level as soon as the summer of 2023.³⁷ If Ameren Missouri is able to execute its PRP, which includes the Project, it should have sufficient resources every year long-term and the Company would be expected to be a net seller of electric energy at levels roughly equivalent to what it has seen historically.³⁸

22. Ameren Missouri has determined that new renewable generation is the most affordable energy resource to replace retiring coal-fired generation plants.³⁹

23. The 2022 PRP produces the lowest net present value of revenue requirement (NPVRR) among the alternative resource plans considered by Ameren Missouri across a range of scenarios.⁴⁰ The 2022 PRP -- which includes the Project, along with other future renewable energy additions, energy storage systems, and the natural gas-fired combined cycle plant -- is projected by the Company to meet the needs

³⁴ Exh. 2, *Arora Surrebuttal Testimony*, p. 9.

³⁵ Exh. 2, *Arora Surrebuttal Testimony*, p. 9; Exh. 4 *Michels Surrebuttal Testimony*, pp. 13-14.

³⁶ Exh. 2, *Arora Surrebuttal Testimony*, p. 11.

³⁷ Exh. 2, *Arora Surrebuttal Testimony*, p. 9.

³⁸ Exh. 3, *Michels Surrebuttal Testimony*, p.11, 15.

³⁹ Exh.1, *Arora Direct Testimony*, p. 5.

⁴⁰ Exh. 2, *Michels Direct Testimony*, Sch. MM-D2, p. 27.

of its customers at an NPVRR that is over \$600 million lower than if the Company replaces fossil-fuel generation capacity as each existing fossil-fuel generation plant is retired.⁴¹

24. The Project will support Ameren Missouri's plan to transition its generation fleet from aging coal-fired generation to clean energy resources, with significantly greater reliance of renewable energy resources.⁴²

25. Successful renewable energy projects take five to eight years to reach commercial operation.⁴³ Among other risks to successfully developing a renewable energy project, Ameren Missouri loses good projects due to constructability issues or competition from large technology firms outside of the Company's service area for the best available renewable projects.⁴⁴

26. The U.S. Environmental Protection Agency has published proposed revisions to the Cross-State Air Pollution Rule that focus on ozone season emissions. If implemented, the rule could potentially limit the generation of Ameren Missouri's coal-fired units during the summer months, absent investment in expensive pollution control equipment. Significant generation from solar resources, such as the Project, during the summer months would provide a large measure of mitigation.⁴⁵

27. Ameren Missouri will have a need for winter capacity in 2026 that it has determined can be met with new solar resources, which are assumed to provide reliable capacity of 11% of rated output during the winter season.⁴⁶

⁴¹ Exh 4, *Michels Surrebuttal Testimony*, p. 27.

⁴² Exh.1, *Arora Direct Testimony*, p. 3.

⁴³ Exh. 1, *Arora Direct Testimony*, p. 14.

⁴⁴ Exh. 2, *Arora Surrebuttal Testimony*, pp. 24-25.

⁴⁵ Exh. 3, *Michels Direct Testimony*, p. 15.

⁴⁶ Exh. 3, *Michels Direct Testimony*, p. 14.

28. Under Ameren Missouri's 2022 PRP, the Company is planning to add the amount of new capacity resources that are necessary to meet its capacity resources in all seasons. The Company's summer generating capacity position will be above what is anticipated to meet load and reserve margin requirements in all years, but those resource additions are necessary to ensure reliability in the winter season. Under the 2022 PRP, the summer capacity position is anticipated to be less than 500 MW of capacity beyond load and reserve margin requirements by 2040. In the meantime, the Company can sell excess capacity into the MISO market and use those revenues to reduce costs to customers.⁴⁷

29. Waiting to add renewable resources could result in Ameren Missouri falling short of meeting energy needs or requiring the rapid deployment of less beneficial resources, particularly if viable renewable energy projects are limited, transmission constraints cause delays or higher costs, or financing rates are higher in the future when transitioning from fossil-fuel generation.⁴⁸

30. Analysis by Ameren Missouri of its peak days for each summer and winter month from 2019 through 2021 showed that, without the coal-fired Meramec Energy Center (retired at the end of 2022) and Rush Island Energy Center (scheduled for retirement by the end of 2025), the Company would have had to purchase more energy than it generated to serve its native load.⁴⁹ On four of the 18 peak days, the estimated added costs to purchase the needed energy to serve its native load would have been

⁴⁷ Exh. 2, *Arora Surrebuttal Testimony*, p. 14-15; Exh. 3, *Michels Direct Testimony*, p. 17.

⁴⁸ Exh. 4, *Michels Surrebuttal Testimony*, p. 39.

⁴⁹ Exh. 4, *Michels Surrebuttal Testimony*, p. 40-41.

over \$1 million for each of those four days, with one peak day in February of 2021 (during Winter Storm Uri) estimated at over \$9 million for that day alone.⁵⁰

31. Legislative changes considered by the U.S. Congress in the last two years could significantly change energy policy and “drive the need for an imminent and significant expansion of renewable energy resources within an uncomfortably short timeframe.”⁵¹

PISA

32. The Plant-in-Service Accounting (PISA) mechanism allows investor-owned utilities in Missouri the option of deferring 85% of all depreciation expense and return associated with qualifying electric plant that was recorded to plant-in-service as a regulatory asset on or after the date the utility elects the PISA option. Qualifying plant for the purposes of the PISA deferral are all rate base additions that are not new nuclear, coal, or gas-fired generation or investment for new services.⁵²

33. Ameren Missouri intends to utilize PISA for the Project. The Project is not required for Renewable Energy Standard (RES) compliance, so no costs or revenues of the Project will be included in the Renewable Energy Standard Rate Adjustment Mechanism (RESRAM).⁵³

Tax Credit Programs

34. Using federal investment tax credits (ITCs), 30% of project costs may be claimed as a credit against income.⁵⁴

⁵⁰ Exh. 4, *Michels Surrebuttal Testimony*, p. 41.

⁵¹ Exh. 3, *Michels Direct Testimony*, p. 18.

⁵² Exh. 101, *Dhority Rebuttal Testimony*, p. 4.

⁵³ Exh. 101, *Dhority Rebuttal Testimony*, pp. 4-5.

⁵⁴ Tr. 167 (Forsberg).

35. The federal production tax credits (PTCs) are a credit against income per kilowatt hour generated.⁵⁵

36. Ameren Missouri originally planned to utilize, and requested approval for, a tax equity partnership to take advantage of ITCs to help finance the Project.⁵⁶ However, in a notice filed on November 8, 2022,⁵⁷ and revised on November 14, 2023, the Company informed the Commission that it would no longer utilize ITCs and tax equity financing because utilizing PTCs authorized under the federal IRA would be more favorable for its customers.⁵⁸

37. On January 18, 2023, Ameren Missouri filed testimony stating Ameren Missouri's current expectation is that the Project will be located in an "energy community," under the IRA, which would boost the ITC from 30% to 40% and would increase the PTC rates by 10% each year.⁵⁹ The testimony also adjusted the expected project cost upward by approximately 30%. These two factors have altered the Company's position to a state of uncertainty as to whether they will ultimately use PTCs, ITCs with a transfer of the tax credits, or ITCs with tax equity financing in connection with the Project.⁶⁰ If the Company decides to utilize tax equity financing, it would request authority for such financing in a future, separate proceeding.⁶¹

Proposed Conditions

38. Staff recommends the Commission not grant the CCN, but if the Commission decides to grant the CCN, Staff suggests the following conditions:

⁵⁵ Tr. 168 (Forsberg).

⁵⁶ Application, pp. 2, 18.

⁵⁷ File No. EA-2022-0245, *Notice Regarding Impact of the Inflation Reduction Act on Relief Sought*.

⁵⁸ File No. EA-2022-0245, *Revised Notice Regarding Impact of the Inflation Reduction Act on Relief Sought*.

⁵⁹ Exh. 9, *Forsberg Surrebuttal Testimony*, pp. 2-3.

⁶⁰ Tr. 166 (Forsberg).

⁶¹ Exh. 9, *Forsberg Surrebuttal Testimony*, pp. 2-3.

- a. Ameren Missouri shall specifically delineate within each FERC account, with unique general ledger coding and/or record into sub-accounts, all revenues, investments, and expenses associated with the Boomtown Solar Project. The specific delineation of the Project should also include a reasonable allocation of the items related to the Project in which the amount is indirectly attributable to the Project. The unique recording for these items is to be available for Staff's review during future Ameren Missouri general rate cases.
 - b. Ameren Missouri shall use sound engineering judgment and commercially reasonable efforts to meet the IEEE standard P2800 for the Project and future transmission interconnected solar projects.
 - c. Ameren Missouri shall accept that the in-service criteria contained in Confidential Attachment SEL-3 and Confidential Attachment SEL-4 to Staff Witness Shawn E. Lange's rebuttal testimony are appropriate for use in a future case to determine whether the Project is in-service.
 - d. Ameren Missouri shall notify the Commission and provide an updated economic analysis if the upgrade cost exceeds those outlined in the Generator Interconnection Agreement (GIA) by more than 15%.
 - e. Ameren Missouri shall file with the Commission all as-built drawings for the project no later than 60 days after the site is commercially operational.
 - f. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.
 - g. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.
 - h. Ratepayers that do not participate in the Renewable Solutions Program shall be held harmless during any rate review period if the costs of the Project exceed the revenues from the facility
39. OPC recommends not granting the CCN, but If the Commission decides to grant the CCN, OPC recommends the following conditions:
- a. Proper utility-scale solar conservation habitat practices.
 - b. Appropriate storm water run-off management plans.

- c. Solar panel selections not sourced from Chinese forced Uyghur labor camps.
- d. Plans covering end-of-life solar panel waste management considerations.

40. Ameren Missouri agreed that imposition of four of the conditions, with an unopposed modification to a fifth condition, was acceptable to the Company.⁶²

Other Project Benefits

41. Access to renewable energy generation is increasingly vital to a region's competitive economic development.⁶³ Offering its larger customers an option to purchase renewable energy is one way for Ameren Missouri to help prevent these customers from leaving, or seeking to expand outside, the Ameren Missouri service territory.⁶⁴

42. Surveys in the latest edition of a prominent economic development trade publication showed that 74% of corporate respondents indicated that access to renewable resources was either very or somewhat important to their company, and 91% of site consultant respondents indicated that access to renewable energy resources was either very or somewhat important to their clients' location decisions.⁶⁵ Real business investment decisions are being made based on renewable energy access, and states that can provide access to renewables are succeeding in some of the largest economic development opportunities in the country.⁶⁶

⁶² File No. EA-2022-0245, *Ameren Missouri's Statement of Positions*, pp.7-8 (filed Jan. 27, 2023); *Post-Hearing Brief of Union Electric Company, dba Ameren Missouri*, pp. 36-37 (filed Mar. 3, 2023); Exh. 14, *Arora Surrebuttal Correction*.

⁶³ Exh. 6, *Dixon Surrebuttal Testimony*, p. 12.

⁶⁴ Exh. 7, *Forsberg Direct Testimony*, p. 6.

⁶⁵ Exh. 6, *Dixon Surrebuttal Testimony*, pp. 12-13.

⁶⁶ Exh. 6, *Dixon Surrebuttal Testimony*, p. 14

43. Solar and wind generation are dependent on weather conditions, which vary by geographic location.⁶⁷ Although Ameren Missouri anticipates having the majority of its future solar generation in Missouri, the Project would be located in Southern Illinois.⁶⁸ If Missouri is cloud covered, but Southern Illinois is sunny, the Boomtown Solar facility would be producing power, aiding the Company's reliability of service via geographical diversity.⁶⁹

44. Solar generation produces no emissions of carbon dioxide.⁷⁰ The Project supports Ameren Missouri's goal of net zero carbon emissions by 2045, with reductions in carbon emissions of at least 60% by 2030 and 85% by 2040, compared to 2005 levels.⁷¹ Many of the Company's large customers have similar goals.⁷²

45. Renewable generating resources, such as the Project, are insulated from the price volatility risks associated with fossil-fuel generation because they do not require any fuel to operate. Once installed, these resources rely on free solar or wind resources to produce electricity.⁷³

46. The large-scale expansion of renewable resources, such as the Project, provides significant risk mitigation to Ameren Missouri's generation portfolio, particularly with respect to the potential for additional environmental regulations, changes in climate policy and carbon dioxide prices, and other factors that may significantly affect the operating costs and benefits of the Company's existing coal-fired resources.⁷⁴

⁶⁷ Exh. 1, *Arora Direct Testimony*, p. 13.

⁶⁸ Tr. 97 (Arora).

⁶⁹ Tr. 97-98 (Arora).

⁷⁰ Exh. 3, *Michels Direct Testimony*, p. 3.

⁷¹ Exh. 3, *Michels Direct Testimony*, p. 3.

⁷² Exh. 400, *Teague Rebuttal Testimony*, p. 3; Exh. 300, *Brubaker Rebuttal Testimony*, p. 3.

⁷³ Exh. 2, *Arora Surrebuttal Testimony*, p. 15; Tr. 175 (Forsberg).

⁷⁴ Exh. 3, *Michels Direct Testimony*, p. 3.

Renewable Solutions Program

47. Ameren Missouri has requested approval of tariff sheets establishing a subscription-based renewable energy program – the Renewable Solutions Program (RSP). The RSP would be a voluntary renewable energy purchasing program for large commercial and industrial customers and government accounts.⁷⁵ Phase 1 of the program would be supported by the Boomtown Solar Project.⁷⁶

48. OPC suggests that the Company's pending electric rate case, File No. ER-2022-0337, is a "better venue" for review of the RSP because the cost of service data used to establish the Renewable Benefits Credit is expected to be updated in the pending rate case.⁷⁷

49. After the Project costs increased, the combined Project and RSP are only estimated to provide approximately \$6.8 million of net cost on a net present value basis for all Ameren Missouri customers over a 30-year period, derived primarily from the competitive economics of the Project and expected net contributions to the Project costs made by subscribing customers.⁷⁸

50. The RSP is proposed to include multiple phases and multiple resource types. Because there is no specific identified project, the RSP can include wind as well as solar.⁷⁹ Each additional phase will have a separate rate schedule that will require Commission approval.⁸⁰

⁷⁵ Exh. 11, *Wills Direct Testimony*, p. 2.

⁷⁶ Exh. 7, *Forsberg Direct Testimony*, p. 3.

⁷⁷ Exh. 200, *Marke Direct Testimony*, p. 9.

⁷⁸ Exh. 7, *Forsberg Direct Testimony*, p. 3; Exh. 9, *Forsberg Surrebuttal Testimony*, p. 2 and 4-5; Transcript p. 189-188.

⁷⁹ Exh. 7, *Forsberg Direct Testimony*, p. 8.

⁸⁰ Rider RSP, Original Sheet No. 83.6.

51. Ameren Missouri has experience with a previously approved renewable energy subscription program (Renewable Choice) designed to give large commercial and industrial customers an option to voluntarily subscribe to receive up to 100% of their annual usage from a new wind resource to be developed for the program. Subscribers would pay a per-kilowatt-hour (kWh) charge for their share of all resource output and would receive a per-kWh credit based on the market revenues realized from injecting that energy into regional wholesale energy markets.⁸¹

52. The Renewable Choice program has not resulted in any renewable projects or subscribers since its approval. Ameren Missouri identified a couple of design flaws in Renewable Choice, including that the subscription process relied on non-binding customer commitments as the basis for the development of a specific program resource creating uncertainty and a significant risk of unsubscribed capacity being built.⁸² The second design flaw of Renewable Choice is that the pricing was derived from the market prices applicable to the energy produced by the program resource. Potential subscribers indicated they preferred program subscriptions not tied directly to market prices.⁸³

53. The RSP was designed to fix these previous design flaws. First, the Company started with its Integrated Resource Plan (IRP). The resources to be constructed for the RSP are resources that are needed to execute Ameren Missouri's transition to a greater reliance on renewable energy generation as outlined in its 2022 PRP.⁸⁴ Second, the RSP uses firm customer demand under binding contracts.⁸⁵

⁸¹ Exh. 11, *Wills Direct Testimony*, p. 3.

⁸² Exh. 11, *Wills Direct Testimony*, p. 4-5.

⁸³ Exh. 11, *Wills Direct Testimony*, p. 5.

⁸⁴ Exh. 11, *Wills Direct Testimony*, p. 4-5.

⁸⁵ Exh. 11, *Wills Direct Testimony*, p. 5.

54. Renewable Solutions will be available to customers served under the Company's existing service classifications 3(M) – Large General Service, 4(M) – Small Primary Service, and 11(M) – Large Primary Service, and is designed as a rider that sits on top of the existing base rate structure of those tariffs. Customers that choose to subscribe to the RSP will still be subject to all of the charges associated with those base rate tariffs. The RSP features a charge and a credit that will be added to the bill on top of those existing charges.⁸⁶

55. The charge for the program, called the Renewable Resource Charge, is structured as a monthly capacity charge that is calculated using a rate that is stated as dollars per kilowatt (kW) of program capacity dedicated to the subscribing customer.⁸⁷ Because the amount of such capacity is fixed contractually at the time the customer enrolls, this capacity charge essentially becomes a fixed monthly program charge, customized for each subscriber, for the entire term of the customer's subscription.⁸⁸

56. The fixed charge escalates annually at 2.5% over the term of the RSP, but is defined up front for all program years for each phase of the program, creating a predictable price for subscribers and a predictable revenue stream to cover costs of program resources.⁸⁹

57. A monthly Renewable Benefits Credit (RBC) based on the actual amount of renewable energy generated by the subscriber's share of the RSP generation resources'

⁸⁶ Exh. 11, *Wills Direct Testimony*, p. 6.

⁸⁷ Exh. 11, *Wills Direct Testimony*, p. 6.

⁸⁸ Exh. 11, *Wills Direct Testimony*, p. 6-7.

⁸⁹ Exh. 11, *Wills Direct Testimony*, p. 6-7 and 16.

capacity for each month is deducted from the customer's bill.⁹⁰ Because RSP subscribers are still paying their underlying tariff charges, the RBC prevents them from effectively paying twice towards the costs of different generating resources.⁹¹

58. The RBC is based on the avoided cost of non-RSP resources.⁹² This cost was established using the class cost of service study, from the last rate review, File No. ER-2021-0240.⁹³ The numbers were then escalated to account for the difference between the performance of the study and the project year in service.⁹⁴

59. The RSP's fixed charge structure eliminates the uncertainty on the total amount subscribers will pay into the program, and thereby creates a higher likelihood that program costs will be covered by subscribers.⁹⁵

60. The net effect on non-subscribers of lower production is largely mitigated by increased subscriber payments to offset the reduction in market energy revenues.⁹⁶

61. The balance of costs and benefits for subscribers created by the RSP structure matches the way customers typically engage with renewable energy.⁹⁷

62. Florida Power & Light Company (FPL) offers a program (SolarTogether) that began in 2020 with an almost identical rate structure to the RSP – with a capacity charge based on the amount of solar capacity needed to meet customers' renewable energy needs, and a benefits credit based on the actual production of the customers'

⁹⁰ Exh. 11, *Wills Direct Testimony*, pp. 6-7.

⁹¹ Exh. 11, *Wills Direct Testimony*, p. 8.

⁹² Exh. 11, *Wills Direct Testimony*, p. 8.

⁹³ Exh. 11, *Wills Direct Testimony*, p. 13.

⁹⁴ Exh. 11, *Wills Direct Testimony*, p. 16-17.

⁹⁵ Exh. 11, *Wills Direct Testimony*, p. 10-11.

⁹⁶ Exh. 11, *Wills Direct Testimony*, p. 11.

⁹⁷ Exh. 11, *Wills Direct Testimony*, p. 12.

subscribed share of program capacity. FPL's program is fully subscribed for almost 1,500 MW of renewable generation capacity.⁹⁸

63. When deciding whether to locate in Missouri, it will not matter to customers wanting a renewable source of energy that the generation resource is outside the state of Missouri since that resource will be part of Ameren Missouri's generation mix.⁹⁹

64. Ameren Missouri solicited 20 customers for Phase 1 (Boomtown Solar) of the RSP. Among those customers, there was 269 MW of demand, but Phase 1 of the RSP is limited to 150 MW to match the resource (the Project) to be built for that phase.¹⁰⁰

65. Across all twelve key scenarios tested, the existence of the program lowers the cost and in some cases the risk of the Project, in all cases improving the outcomes for all customers by approximately \$11.7-27.8 million NPVRR.¹⁰¹

66. Ameren Missouri's business development team is seeing an increasing number of economic development proposals that include a requirement for renewable energy access, across a variety of industry sectors.¹⁰²

67. The Boomtown Solar Project will generate renewable energy that provides Renewable Energy Credits (RECs). RECs represent the legal entitlement to the renewable attribute of generation associated with qualified renewable resources. RECs have an observable market where the implied cost of the RECs under Ameren Missouri's RSP could be compared for reasonableness.¹⁰³

⁹⁸ Exh. 11, *Wills Direct Testimony*, p. 12.

⁹⁹ Tr. 156-157; Exh. 7, *Forsberg Direct Testimony*, p. 12.

¹⁰⁰ Exh. 11, *Wills Direct Testimony*, p. 20; and Ex. 7P, *Lindsey Forsberg Direct Testimony*, p. 12.

¹⁰¹ Exh. 7, *Forsberg Direct Testimony*, p. 18; and Ex. 9P, *Lindsey Forsberg Surrebuttal Testimony*, p. 5, Table 2.

¹⁰² Exh. 7, *Forsberg Direct Testimony*, p. 6.

¹⁰³ Exh. 11, *Wills Direct Testimony*, p. 4-5.

68. As part of the RSP, subscribing customers commit to the program for a fifteen-year contract term, and the RECs for the portion of renewable energy that their subscribed kilowatts produce are retired on their behalf.¹⁰⁴

III. Conclusions of Law

A. Ameren Missouri is an “electric corporation” and a “public utility,” as those terms are defined by Section 386.020, RSMo (Cum. Supp. 2022). As such, the Company is subject to the jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 393.170.1, RSMo (Cum. Supp. 2022), provides, in part, that “[n]o . . . electrical corporation . . . shall begin construction of a . . . electric plant . . . without first having obtained the permission and approval of the commission.”

C. Section 393.170.3, RSMo (Cum. Supp. 2022), provides that:

[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. . . .

D. Section 393.170, RSMo (Cum. Supp. 2022), sets the legal standard by which the Commission must determine whether to grant Ameren Missouri the certificate of convenience and necessity it seeks. In interpreting the meaning of that legal standard in a 1993 decision, the Missouri Court of Appeals said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is ‘necessary or convenient for the public service’ (*citing* section 393.170.3). The term ‘necessity’ does not mean ‘essential’ or absolutely indispensable’, but that

¹⁰⁴ Exh. 7, *Forsberg Direct Testimony*, p. 8; and Union Electric Company Electric Service MO.P.S.C. Schedule No. 6 (“Rider RSP”), Sheet No. 83.

an additional service would be an improvement justifying its cost (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2nd at 219). . . . Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (*Citing State ex rel. Ozark Elec. Coop. v. Public Serv. Comm’n*, 527 S.W.2d 390, 392 (Mo. App. 1975)).¹⁰⁵

E. Commission Rule 20 CSR 4240-20.045 requires an electric corporation to obtain a CCN prior to operating “[a]n electric generating plant . . . that is expected to serve Missouri customers and be included in the rate base used to set their retail rates regardless of whether the item(s) to be constructed or operated is located inside or outside the electric utility’s certificated service area or inside or outside Missouri[.]”

F. In evaluating applications for certificates of convenience and necessity, the Commission has frequently considered five factors first described in a Commission decision regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company.¹⁰⁶ The *Tartan* factors, as they have become known, are: “(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.”¹⁰⁷

G. While the *Tartan* factors are frequently cited in Commission decisions regarding applications for certificates of convenience and necessity, they are merely guidelines for the Commission’s decision, and are not part of the legal standard set forth by the controlling statute. Moreover, the *Tartan* decision concerned an application for a

¹⁰⁵ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2nd 593, 597-598 (Mo. App. W.D. 1993).

¹⁰⁶ *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173 (1994).

¹⁰⁷ *Tartan Energy*, at 177.

certificate to provide natural gas service to a particular service area. As a result, the described factors are not precisely applicable to Ameren Missouri's application to construct the Boomtown Solar Project. Nevertheless, they provide some guidance and are specifically referenced in the list of issues set forth by the parties for resolution by the Commission.

H. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.¹⁰⁸ The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.¹⁰⁹

I. Subdivision 393.1400.2.(1), RSMo (Cum. Supp. 2022), which is referred to as the Plant in Service Accounting (PISA) statute, states:

Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after

¹⁰⁸ Sections 393.1025 and 393.1030 (Renewable Energy Standard); and Section 393.1075 (Missouri Energy Efficiency Investment Act).

¹⁰⁹ See, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092, Report and Order, p. 20 (MoPSC July 11, 2018) (citing to Report and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, April 24, 2013, pp. 14-15; Report and Order, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, March 2, 2016, pp. 15-16; Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, File No. EA-2016-0208, December 21, 2016, pp. 19-20).

the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and the amortization of regulatory asset balances that arose under this section prior to such expiration.

J. Subdivision 393.1400.2.(2), which is referenced in Subdivision 393.1400.2.(1), states:

The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

K. The PISA statute does not allow for immediate recovery of depreciation expense and return. Instead, those amounts are to be deferred in a regulatory asset for recovery in rates that will be established in a subsequent general rate case. The PISA statute applies to all depreciation expense and return associated with qualifying electric plant.

L. Subsection 393.1400.5, RSMo, which is also referenced in Subdivision 393.1400.2.(1), RSMo, indicates the PISA statute applies only to an electrical corporation that files notice with the Commission of its intent to be subject to that statute. As the Commission found in Finding of Fact No. 33, Ameren Missouri intends for the Project to be subject to the PISA statute.

M. Per 20 CSR 4240-22.010(2), “[t]he fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.”

N. Under Subsection 393.140(11), RSMo (2016), the Commission has general authority to review any new tariffed programs and associated charges, such as the Renewable Solutions Program and its associated pricing.

IV. Decision

Ameren Missouri requests a certificate of convenience or necessity (CCN) to construct, install, own, operate, maintain, and otherwise control a 150 MW solar generation facility, located in White County, Illinois ("Boomtown Solar Project" or "Project"). Traditionally, in determining whether a certificate is "necessary or convenient for the public service," the Commission looks to five criteria referred to as the *Tartan* factors.¹¹⁰ The *Tartan* factors contemplate: (1) the need for service, (2) the utility's qualifications, (3) the utility's financial ability, (4) the feasibility of the proposal, and (5) promotion of the public interest.

After reviewing all the evidence and arguments of the parties, the Commission determines that the certificate should be granted.

The Tartan Factors

Need for the Service

Ameren Missouri is in the process of replacing its fossil-fuel generating fleet. The Company has determined that new renewable generation is the most affordable energy resource to replace retiring coal-fired generation plants. Both Staff and OPC object to granting the CCN based on need. Staff presented evidence that the need to replace coal-fired generation will not occur until Rush Island is retired in 2026 and other coal-generating plants are retired in subsequent years. OPC took issue with the

¹¹⁰ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173 (issued September 16, 1994).

replacement of dispatchable generating capacity with non-dispatchable renewable resources.

However, Ameren Missouri presented convincing evidence that renewable energy projects take five to eight years to develop and implement, that good projects are hard to come by, and that tax credits for renewable generation that will lower the cost of constructing new generation are available now. Thus, Ameren Missouri cannot wait until a coal-fired generation plant is retired to begin the process of replacing its capacity.

Further, Ameren Missouri presented evidence that the Project will provide needed energy in the summer, when both the Company and MISO need it most, at the lowest cost among available options. In addition, Ameren Missouri projects that new solar resources, including the Project, can meet winter capacity by 2026, when a shortfall is otherwise anticipated. Therefore, the Commission finds that there is a need for Ameren Missouri to build the Boomtown Solar Project.

The Project adds capacity and will generate renewable energy that is needed -- particularly during peak summer demand.

Qualifications and Financial Ability to Provide the Service

The second and third factors need not be considered further, as they are not in dispute. The Commission finds Ameren Missouri has the qualifications and the financial ability for the Project.

Economic Feasibility

OPC's position is that the fourth factor of economic feasibility has not been satisfied because the Project has not been shown to generate more revenues and avoid

more costs than the costs Ameren Missouri's retail customers will incur if the Company builds the Project.¹¹¹ However, the test is whether the improvement justifies its cost.

By 2026, the Company will need capacity to meet MISO requirements for capacity due to impending retirements of its coal-fired generation plants. The Project helps meet that capacity need – including peak summer and peak winter periods. Renewable generation is the most affordable energy resource to replace coal-fired generation plants. This project will also produce energy during peak times to serve customers. This means Ameren Missouri should not have to buy energy to meet its peak needs off the market at peak demand when costs are higher. However, the amount of savings are not quantifiable yet. Waiting to add renewable generation resources until coal-fired plants are retired and capacity need is immediate would put Ameren Missouri at risk of being unable to meet its customers' load at peak times. Like Ameren Missouri, MISO is no longer long on capacity, especially in peak summer months. The Company can no longer count on the MISO market as a source of low cost energy to meet its peak load. Delaying development of renewable generation also exposes the Company to the risks of transmission constraints and higher financing rates in the future.

The Project results from a competitive RFP process in which Ameren Missouri used due diligence in selecting a developer. The Company and the developer reached an arms-length agreement on a contract to build and transfer ownership of the Project. Thus, the Project is being acquired at fair market value.

Tax credits are currently available to reduce the cost of the Project that may not be available in the future. In addition, it is anticipated that the Project will generate excess

¹¹¹ File No. EA-2022-0245, *Public Counsel's Positions* (filed Jan. 27, 2023).

energy that can be sold into the MISO market, further reducing the Project's cost. The Commission finds the Project economically feasible.

Promotes the Public Interest

Ameren Missouri presented evidence that electric utilities compete for scarce resources when seeking to secure renewable facility siting, permits, and equipment. Project development can take years, and if a project is optioned, the failure to timely execute on that option allows other interested parties to acquire the site, equipment, and permits. The Company also presented evidence that it is not feasible to wait until a projected shortfall is about to occur before adding renewable resources, given the implementation timeline for renewable projects and the limited availability of suitable projects.

The recent retirement and planned retirement of three of Ameren Missouri's four coal-fired generation facilities by 2030 will change the Company from, historically, having a long buffer on both energy and capacity to having a shortfall as soon 2024. Ameren Missouri presented evidence that, if it is able to execute its Preferred Resource Plan, which includes the Project, it should have sufficient resources every year long-term, and the Company would be expected to be a net seller of electric energy at levels roughly equivalent to what it has seen historically.¹¹²

The evidence presented shows that, by acting to add renewable resources now, Ameren Missouri will avoid possible (1) deployment of less beneficial resources that might occur due to limited availability of viable tax credits, (2) transmission constraints causing delays or higher costs, and (3) higher future financing rates. Adding renewable energy

¹¹² Exh. 3, *Michels Surrebuttal Testimony*, pp.11, 15.

generation in place of fossil fuel generation provides a hedge against risks associated with power prices, carbon prices, and fuel prices.

The Project has economic development benefits. Demand for clean, reliable, and affordable energy is an increasingly important factor in determining where businesses locate new jobs and investment. Missouri is competing with other states for new jobs and investment from businesses that have large energy demand and a need for renewable energy resources. Customer preferences for renewable energy and corporate sustainability goals by Missouri's large employers for their energy needs should not be dismissed.

The Commission finds that the Project promotes the public interest.

In a nutshell, the Boomtown Solar Project satisfies all five of the Tartan factors and provides an improvement to Ameren Missouri customers that justifies its cost. The Commission will grant the CCN, but with conditions.

Staff and OPC have suggested the Commission attach several conditions to the granting of a CCN for the Project. Ameren Missouri agreed that imposition of four of the conditions, with an unopposed modification to a fifth condition, was acceptable to the Company. With the exception of the conditions set out below, the Commission does not find any other proposed conditions to be reasonable or necessary. The Commission will condition the granting of the CCN on a limited number of conditions, as set forth in the order, below. With these reasonable and necessary conditions, the Commission finds that granting Ameren Missouri a CCN is reasonable and in the public interest.

The RSP

The proposed RSP is a utility-operated renewable service program that brings new renewable resources to Ameren Missouri's system supported by binding commitments from customers with firm demand. Commercial and industrial customers have already made a commitment to capacity under the RSP. Additionally, the program is tied to the Boomtown Solar Project.

Under Subsection 393.140(11), RSMo., the Commission has general authority to review any new tariffed programs and associated charges, such as the Renewable Solutions Program and its associated pricing. OPC suggests that this is not an appropriate proceeding for the Commission to review the RSP. OPC does not cite to any authority that requires a separate proceeding, but rather, OPC witness Dr. Marke suggests that the Company's pending electric rate case, File No. ER-2022-0337, is a "better venue" for review of the RSP because the cost of service data used to establish the Renewable Benefits Credit is expected to be updated in the pending case. Because the RSP is interrelated with the CCN and Ameren Missouri's electric rate case is operating on a separate and distinct procedural schedule, the Commission finds the most efficient and effective review of the RSP is during the course of this case.

The program structure is proposed to include multiple phases and multiple resource types. The pricing will be dependent on the phases. Additionally, the credit will annually escalate by 2.5 percent. The testimony from the Company witnesses and the proposed tariff shows that any RECs generated will be retired on behalf of the customer.

The RSP is proposed as an optional rider that is available to customers under 3(M), 4(M), and 11(M) services. The rider has two billing components. The first component is

the Renewable Resource Charge, which is a \$/kW charge assessed based on the amount of program capacity contracted by the customer. This charge is designed to reflect the costs associated with the resources for the phase the customer has contracted. The second component is the Renewable Benefits Credit, which is \$/kWh credit based on the production from the renewable energy resource.

Ameren Missouri cites two main components driving their renewable program. The first is that they are seeing a number of corporate customers tracking carbon goals and seeking clear, near-term ways to reduce carbon emissions. Offering its larger customers an option to purchase renewable energy is one way for Ameren Missouri to help prevent these customers from leaving, or seeking to expand outside, the Ameren Missouri service territory. Furthermore, the RSP is seen as a step along Ameren Missouri's net zero carbon reduction goal by 2045.

Ameren has proposed multiple programs in the past. The most recent program is Renewable Choice, which is described as following a Power Purchase Agreement model. However, Renewable Choice has not resulted in any projects and remains unsubscribed. This shows that the non-binding nature of Renewable Choice and the variable charges created uncertainty, resulting in an unfavorable environment for executing resource projects.

The evidence also showed that FPL's SolarTogether, which Ameren Missouri explicitly mentions as a model for their program has been fully subscribed demonstrating success with that particular program model.

The Commission finds the RSP will lower the NPVRR associated with the Project because the Project's cost is being subsidized by the RSP subscribers. Additionally, the

RSP will make Missouri more competitive in attracting and retaining businesses or business expansions, which in turn generates jobs, taxes, other economic benefits and allows the Company to spread its fixed costs over more sales, to the benefit of all customers. This competitive advantage is supported regardless of the location of the renewable facility at issue – as evidenced by the robust subscriptions already in hand from subscribing customers who sought even more MW of renewable capacity than the Project makes available.¹¹³

Tracking Benefits

Both Staff and OPC oppose granting the RSP arguing that the Project's costs will exceed RSP subscriber revenues and the difference will have to be covered by non-subscribers. OPC's position is that any approval of the RSP should be conditioned on including a 50/50 risk sharing between Ameren Missouri and its retail customers of any shortfall in revenues attributable to the Boomtown Solar Project and the cost of that project in Ameren Missouri's revenue requirement and fuel adjustment clause.

Ameren Missouri argues there should be no conditions placed on approval of the RSP. Ameren Missouri's argument is that the RSP reduces the customer revenue requirements added by the Project and reduces the economic risks of the Project. The Company's position is that OPC's suggestion of a 50/50 risk sharing arrangement between customers and the Company for a needed resource is inappropriate.

A key part of the RSP is that the benefits Ameren Missouri has presented will accrue to all customers as a result of subscribers paying a premium in order to claim the renewable attributes of the program resource. Thus, the Commission determines that a

¹¹³ Tr. 156-157; Ex. 7, *Forsberg Direct Testimony*, p. 12.

tracker is needed to ensure that all of those benefits ultimately accrue to all customers. However, the degree to which such benefits manifest cannot be determined without also tracking the costs. Therefore, the Commission will direct Ameren Missouri to track and specifically delineate within each FERC account all revenues, investments and expenses associated with the RSP and the Project. The Commission will also direct that the tracked information accompany or be made available with the filing of its next rate case for Commission consideration.

The Commission also finds it reasonable to make this report and order effective in less than 30 days in consideration of the Company's original request related to the timing of the decision and in consideration of the May 1, 2023, proposed tariff effective date of the RSP and to allow for necessary contracting and construction to begin expeditiously.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri is granted a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control a 150 MW solar generation facility, located in White County, Illinois (the Project), pursuant to a build transfer agreement (BTA) with Boomtown Solar Holdings LLC, subject to the following conditions:

- a. Ameren Missouri shall use sound engineering judgment and commercially reasonable efforts to meet the IEEE standard P2800 for the Project and future transmission interconnected solar projects.
- b. The in-service criteria contained in Exhibit 104C, Lange Rebuttal Testimony, Confidential Attachment SEL-3 and Confidential Attachment SEL-4 shall be used to determine whether the Project is in-service.
- c. Ameren Missouri shall file with the Commission as-built drawings for the Project within 100 days after the "Final Completion Deadline," as defined in the BTA, provided that if Invenergy is excused under the terms of the BTA from providing certain as-built drawings by that deadline, Ameren Missouri

will file such as-built drawings within ten (10) days after receipt thereof from Invenenergy. Ameren Missouri will notify the Staff of the Commission within ten (10) days after the Final Completion Deadline if there are any as-built drawings for which Invenenergy was excused from delivering by that deadline.

- d. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.
- e. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.

2. Ameren Missouri is authorized to engage in the transactions by which it, through various subsidiaries, will construct and finance the Project, including transactions under the BTA.

3. Ameren Missouri is authorized to create and execute a subscription-based Renewable Solutions Program (RSP) which offers eligible customers an opportunity to subscribe to a voluntary renewable energy purchasing program in which Phase 1 of the program would be supported by the Boomtown Solar Project. Approval of the RSP is subject to the conditions listed in the next paragraph, below. The details of the RSP are contained within the following tariff sheets filed by Ameren Missouri on July 14, 2022, assigned Tracking Number YE-2023-0010, and approved by the Commission to become effective on May 1, 2023:

Mo. P.S.C. Schedule No. 6

2nd Revised Sheet No. 83, Cancelling 1st Revised Sheet No. 83
2nd Revised Sheet No. 83.1, Cancelling 1st Revised Sheet No. 83.1
2nd Revised Sheet No. 83.2, Cancelling 1st Revised Sheet No. 83.2
2nd Revised Sheet No. 83.3, Cancelling 1st Revised Sheet No. 83.3
Original Sheet No. 83.4
Original Sheet No. 83.5
Original Sheet No. 83.6

4. Ameren Missouri shall track and specifically delineate within each FERC account all revenues, investments and expenses associated with the Renewable Solutions Program and the Boomtown Solar Project. The tracked information shall accompany or be made available with the filing of its next rate case for Commission consideration.

5. Ameren Missouri is authorized to do and perform, or cause to be done and performed all such acts and things, as well as make, execute, and deliver any and all documents as may be necessary, advisable, and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

6. This report and order shall become effective on April 22, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Missouri-American Water	)	
Company's Request for Authority to	)	
Implement General Rate Increase for Water	)	<u>File No. WR-2022-0303</u>
and Sewer Service Provided in Missouri	)	
Service Areas	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§6. Weight, effect and sufficiency

§20. Reports by utilities

The Commission found that MAWC's annual CAM filing to be sufficient for the Commission to analyze MAWC's affiliate transactions.

§30. Settlement procedures

The Commission found that pursuant to Commission Rule, where a stipulation was not signed by all parties, the Commission can treat them as if they were unanimous because no party filed a timely objection.

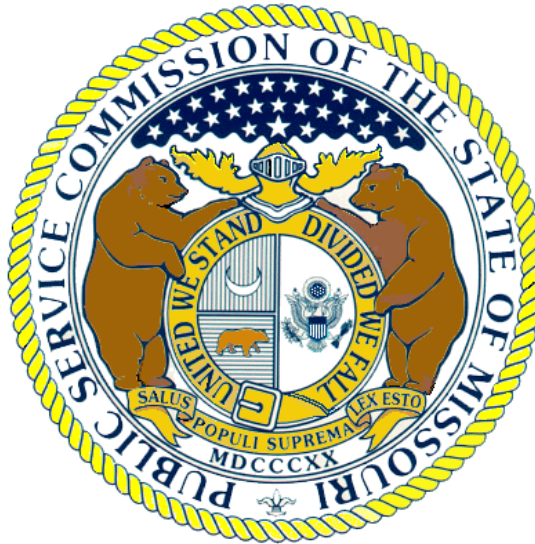
§32. Confidential evidence

So as to not duplicate work already done in a separate working group addressing affiliate transactions rules, the Commission denied a request to open a new rulemaking case to resolve a question of applicability of the affiliate transaction rules to water and sewer utilities.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
May, 2023.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of Missouri-American Water)
Company's Request for Authority to)
Implement General Rate Increase for Water)
and Sewer Service Provided in Missouri)
Service Areas)

File No. WR-2022-0303
Tracking No. YW-2023-0003
Tracking No. YS-2023-0004

REPORT AND ORDER

Issue Date: May 3, 2023

Effective Date: May 13, 2023

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water)
 Company's Request for Authority to)
 Implement General Rate Increase for Water)
 and Sewer Service Provided in Missouri)
 Service Areas)

File No. WR-2022-0303

Tracking No. YW-2023-0003

Tracking No. YS-2023-0004

REPORT AND ORDER

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PUBLIC WATER SUPPLY DISTRICT NO. 2 OF ANDREW COUNTY

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SUNNYDALE PROPERTIES

Stephanie S. Bell, 308 East High Street, Ste. 300, Jefferson City, Missouri 65101

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Joshua Harden, 1010 W. Foxwood Drive, Raymore, Missouri 64083.

REGULATORY LAW JUDGE: Ronald D. Pridgin, Deputy Chief

REPORT AND ORDER

I. Procedural History

A. Tariff Filings, Notice, and Intervention

On July 1, 2022, Missouri-American Water Company (MAWC) filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of July 31, 2022. To allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until May 28, 2023.

The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from: The City of St. Joseph, Missouri; The City of Riverside, Missouri; Public Water Supply District No. 2 of Andrew County; Sunnydale Properties; Missouri Industrial Energy Consumers; Missouri Energy Consumers Group; Consumers Council of Missouri; and Triumph Foods, LLC.

B. Local Public Hearings

The Commission conducted seven virtual local public hearings.¹

C. Stipulations and Agreements

On March 3, 2023, MAWC, the Commission's Staff (Staff), the Office of the Public Counsel (OPC), Midwest Energy Consumers Group (MECG), the City of St. Joseph (St. Joseph), and Consumers Council of Missouri (CCM) filed a Stipulation and Agreement (First Stipulation). The First Stipulation resolved all revenue requirement issues. The First Stipulation allows for a \$95 million rate increase.

¹ Tr. Vols. 3-9.

On March 8, 2023, MEEG, Staff, OPC, Missouri Industrial Energy Consumers (MIEC), Public Water Supply District No. 2 of Andrew County, and CCM filed a Non-Unanimous Stipulation and Agreement on Class Cost of Service and Rate Design (Second Stipulation). On March 10, 2023, MAWC, Staff, OPC, MEEG, St. Joseph, Public Water Supply District No. 2 of Andrew County, the City of Riverside, MIEC, and CCM filed a Stipulation and Agreement as to Rate Design and Class Cost of Service (Third Stipulation). On March 14, 2023, MAWC objected to the Second Stipulation, stating that the Third Stipulation was intended to supersede the Second Stipulation.

Although the First Stipulation and Third Stipulation were not signed by all parties, the Commission can treat them as if they were unanimous because no party filed a timely objection.² The Commission has reviewed the First and Third Stipulations, and finds they will result in just and reasonable rates. Thus, the Commission will approve the First and Third Stipulations. Further, because the Third Stipulation was meant to supersede the Second Stipulation, the Commission will reject the Second Stipulation.

D. Evidentiary Hearing

The evidentiary hearing was held on March 9, 2023, at the Commission's offices in Jefferson City and via WebEx.³

E. Case Submission

During the evidentiary hearing, the Commission admitted the testimony of witnesses, and received exhibits into evidence. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on

² Commission Rule 20 CSR 4240-2.115(2).

³ Tr. Vol. 10.

April 14, 2023, and the case was deemed submitted for the Commission's decision on that date.⁴

II. General Matters

A. General Findings of Fact

1. MAWC is a wholly-owned subsidiary of American Water Works Company that was incorporated in Missouri in 1879. Missouri-American provides water service to approximately 475,000 customers and wastewater service to approximately 18,000 customers in several counties throughout Missouri. MAWC's water systems consist of more than 6,800 miles of main, as well as hydrants, distribution storage tanks, water treatment plants, wells and pump stations. Missouri-American's wastewater system facilities include over 270 miles of collection mains, lift stations, and wastewater treatment plants.⁵

2. MAWC is a "water corporation", "sewer corporation", and a "public utility". MAWC is thus subject to the jurisdiction of the Commission.⁶

3. OPC is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

⁴ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

⁵ Ex. 38, p. 14.

⁶ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2022.

5. The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each and every portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony.⁷

6. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.⁸

B. General Conclusions of Law

a. MAWC is a "water corporation", "sewer corporation", and a "public utility" as defined in Sections 386.020(59), 386.020(49), and 386.020(43), RSMo, respectively. Thus, MAWC is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission's subject-matter jurisdiction over MAWC's rate increase request is established under Section 393.150, RSMo.

b. Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed

⁷ Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

⁸ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, MAWC bears the burden of proving that its proposed rate increase is just and reasonable. To carry its burden of proof, MAWC must meet the preponderance of the evidence standard.⁹ In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that MAWC’s proposed rate increase is just and reasonable.¹⁰

III. Disputed Issues

Should the Commission open a new rulemaking docket in order to draft affiliate transactions rules for water and sewer?

A. Findings of Fact

7. Affiliate transactions are transactions between members of a common enterprise. They are not “arm’s length” transactions.¹¹

8. The purpose of affiliate transaction rules is to protect captive ratepayers from monopolistic abuse. The rules can prevent a regulated utility, and, thus, its ratepayers, from subsidizing nonregulated operations.¹²

9. Interested parties have been working on an affiliate transactions rule to include water and sewer companies in File No. AW-2018-0394, since 2018.¹³

⁹ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

¹⁰ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

¹¹ Ex. 200, p. 1, 11.

¹² Ex. 200, p. 2, 11.

¹³ Ex. 200, p. 9.

10. So as to not duplicate and waste work already done in File No. AW-2018-0394, that case is the most appropriate and efficient venue to resolve any issue of applicability of the rules to water and sewer utilities.¹⁴

11. Staff's work in File No. AW-2018-0394 should produce draft rules in less than six months.¹⁵

B. Conclusions of Law

There are no additional Conclusions of Law for this issue.

C. Decision

The Commission finds that File No. AW-2018-0394 is the proper mechanism to address affiliate transactions for large water companies. The Commission understands OPC's impatience with the speed of work in File No. AW-2018-0394. However, Staff's witness stated that draft rules should be filed within six months. Moreover, a new rulemaking case will not speed up the process and, in fact, may waste the work done in File No. AW-2018-0394. Thus, the Commission will order its Staff to file a status report stating when rules will be filed to begin a formal rulemaking within 90 days of the effective date of this order.

¹⁴ Ex. 14, pp. 25-26; Ex. 15, p. 26; Ex. 115, pp. 23-24.

¹⁵ Tr. Vol. 10, p. 73.

Should MAWC be required to file a Cost Allocation Manual (CAM) with the Commission?

A. Findings of Fact

12. As part of the Stipulation and Agreement in a prior MAWC rate case, File No. WR-2003-0500, MAWC agreed to provide a CAM to Staff and OPC by March 16th of each year. The Commission approved that Stipulation and Agreement on April 6, 2004, and MAWC has filed a timely CAM annually since the Commission approved that Stipulation and Agreement.¹⁶

13. American Water Works Service Company, Inc. (Service Company) provides services to MAWC that include customer service, water quality testing, innovation and environmental stewardship, human resources, communications, information technology, finance, accounting, payroll, tax, legal, engineering, accounts payable, supply chain, and risk management services.¹⁷

14. The Service Company provides services to MAWC at cost.¹⁸

15. The CAM that MAWC files annually contains a set of criteria, guidelines and procedures for the Service Company cost allocations to MAWC and its affiliates.¹⁹

16. For setting rates, the costs of support services, including wages, employee benefits, professional services, and other expenses, are based on, or are an allocation of, actual costs incurred. Ultimately, MAWC affiliate transactions are scrutinized in all of its rate cases, including this one.²⁰

¹⁶ Ex. 14, pp. 25-26.

¹⁷ Ex. 42, p. 6.

¹⁸ Ex. 42, p. 7.

¹⁹ Ex. 14, pp. 25-26.

²⁰ Ex. 14, pp. 25-26.

B. Conclusions of Law

There are no additional Conclusions of Law for this issue.

C. Decision

The Commission has already ordered MAWC to comply with a Stipulation and Agreement in File No. WR-2003-0500. That Stipulation and Agreement requires MAWC to file annual CAMs by March 16 of each year. MAWC is compliant with the Commission's order. The Commission finds MAWC's annual CAM filing to be sufficient for the Commission to analyze MAWC's affiliate transactions. This annual CAM filing could change, depending upon what water and sewer affiliate transaction rules, if any, the Commission later promulgates.

IV. Decision

MAWC provides safe and adequate service, and the Commission concludes, based upon its review of the whole record, that the rates approved as a result of this order are just and reasonable and support the continued provision of safe and adequate service. The revenue increase approved by the Commission through the First and Third Stipulations is no more than what is sufficient to keep MAWC's utility plants in proper repair for effective public service and provide to MAWC's investors the opportunity to earn a reasonable return upon funds invested. Further, the Commission finds that MAWC's current annual CAM filings and Staff's upcoming draft rules for affiliate transactions in File No. AW-2018-0394 are the appropriate resolutions of the disputed issues.

So that MAWC may proceed with the expeditious filing of its compliance tariffs, the Commission finds it reasonable to make this Report and Order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The First and Third Stipulations are approved, and their signatories are ordered to comply with their terms. A copy of the First Stipulation and a copy of the Third Stipulation are attached as Appendix A and Appendix B, respectively.

2. The Second Stipulation is rejected.

3. The tariff sheets submitted on July 1, 2022, assigned Tracking Nos. YW-2023-0003 and YS-2023-0004, are rejected.

4. MAWC is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.

5. MAWC shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 20 CSR 4240-10.060 no later than May 10, 2023.

6. Staff shall file its final proposed rules in File No. AW-2018-0394, or a status report stating how much additional time is required to file those draft rules and why additional time is needed, no later than August 11, 2023.

7. This Report and Order shall become effective on May 13, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2023.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri-American Water	)	
Company's Request for Authority to Implement	)	Case No. WR-2022-0303
General Rate Increase for Water and Sewer	)	
Service Provided in Missouri Service Areas.	)	

STIPULATION AND AGREEMENT

COME NOW Missouri-American Water Company (“MAWC” or the “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”), the Midwest Energy Consumers Group, City of St. Joseph, and Consumers Council of Missouri (collectively, the “Signatories”), by and through their respective counsel, and, for their Stipulation and Agreement (this “Stipulation”), respectfully state as follows to the Missouri Public Service Commission (“Commission”):

1. Public Water Supply District No. 2 of Andrew County, City of Riverside, The Empire District Electric Company, the Missouri Industrial Energy Consumers, Triumph Foods, LLC, and Sunnydale Properties are not Signatories to this Stipulation. However, counsel for each have stated that they do not object to this Stipulation.

2. This Stipulation is being entered into for the purpose of settling issues 1, 2, 3b, 3c, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22 and 23 as described in the *List of Issues, List and Order of Witnesses, Order of Opening, and Order of Cross-Examination* in this case on February 16, 2023.

3. **Admission of Testimony:** The Signatories consent to the admission of, and request that the Commission admit into the record in this proceeding, without the need for witnesses to take the stand, all written testimony that has been filed herein.

4. **Total Revenue Requirement:** As a result of the settlements codified in this

Stipulation, the Signatories agree that MAWC's annual revenue requirement on a total company basis should be increased to \$437.5 million. The revenue requirement of \$437.5 million represents an increase of approximately \$95 million over present rate revenues. The approximately \$95 million includes approximately \$50.3 million, which is currently being collected through the Water and Sewer Infrastructure Rate Adjustment ("WSIRA") mechanism.

5. **Water and Sewer Infrastructure Rate Adjustment ("WSIRA"):** MAWC's current WSIRA tariff will be reset to zero as of the effective date of new rates resulting from this proceeding, in accordance with § 393.1509.6 RSMo. Further:

- a. For purposes of the WSIRA, the overall pre-tax weighted average cost of capital shall be 8.65%. Agreement to use of a "pre-tax" cost of capital for this purpose does not limit in any way any party's ability to challenge recovery of income tax amounts associated with WSIRA investments in future proceedings; and,
- b. All WSIRA-eligible investments placed in service beginning January 1, 2023, shall be eligible for the WSIRA mechanism in accordance with Sections 393.1500 et seq., RSMo. However, MAWC's next WSIRA petition shall not be filed until after the effective date of rates resulting from this case.

6. **Billing Determinants:** The billing determinants to be used for establishing customer rates are included as Attachments A (water) and B (sewer) to this Stipulation.

7. **Tax Cut and Jobs Act of 2017 ("TCJA"):** The TCJA tracker balance as of December 31, 2022, shall be applied to the remaining stub period TCJA amortization and the remainder returned to customers as a one-time customer bill credit within ninety (90) days after the effective date of rates resulting from this case. MAWC will provide notice to the Commission when the credit has been completed.

Additionally, the existing tracker will be continued to capture the differences between protected Excess Accumulated Deferred Income Tax (“EADIT”) returned to customers as part of the revenue requirement in this case, and the actual amortization recorded by the Company using Average Rate Assumption Method (“ARAM”) for protected EADIT balances and a ten (10) year amortization period for non-stub period unprotected EADIT balances.

8. **Main Break and Water Loss Report:** MAWC agrees to conduct an annual review regarding its water main breaks and water loss by district, and, for those districts in which water loss is greater than 20%, MAWC shall include a list of items believed to be major contributors to that water loss. MAWC shall provide such review to Staff, OPC, and other interested Signatories no later than the date its Commission annual report is filed, beginning with the year 2024, until the completion of MAWC’s next general rate case.

9. **Late Payment Charge:** MAWC’s Late Payment Charge (currently 1.50% per month) shall be eliminated for both water and sewer.

10. **Pensions and Other Post-Employment Benefits (“OPEBs”):** Pensions and OPEBs shall be treated as described in Attachment C to this Stipulation.

11. **Depreciation Rates:** MAWC shall continue to use the depreciation rates approved in MAWC’s last general rate case, Case Number WR-2020-0344. The depreciation rates are included in Attachments D and E to this Stipulation.

12. **Property Tax:**

a. The amount of revenue requirement used to set rates for property tax shall be set at \$ 34,063,451, pursuant to Section 393.1275, RSMo.

b. MAWC’s deferred property tax balance as of December 31, 2022, shall be included in rate base and amortized over 60 months.

13. Lead Service Line Replacement (“LSLR”):

a. MAWC will continue to defer and book to USOA Account 186 the costs of customer-owned LSLRs applying its long-term borrowing rate as to the carrying costs. MAWC will amortize over ten (10) years the amounts deferred. MAWC’s long-term debt rate shall be applied to the unamortized balance.

b. Additionally, MAWC agrees to file bi-annually a Lead Service Line Report in this case (Case No. WR-2022-0303) that includes the following:

- Known and estimated existing lead lines by source;
- Lines replaced each reporting period filing as well as cumulative total lines replaced to date;
- Location (zip code +4) and customer type of line replacement (e.g., residential, commercial, school, commercial, etc.);
- Average cost, and breakdown by company and customer side, per district for each reporting period;
- Nature and type of pipe replaced (e.g., lead, copper, galvanized gooseneck, etc.);
- Water sampling results.

The Company agrees to meet on a bi-annual basis with Staff and the OPC to review performance to date (e.g., data) as well as the Company’s progress in securing federal funding for lead line replacements. The Company will also work with Staff and the OPC on the appropriateness of updating the Company’s Frequently Asked Questions (“FAQ”) section of its website as well as the inclusion of a lead line replacement dashboard. The Parties to this Stipulation agree to support the Company’s motion to close WW-2019-0242.

14. Call Center Operational Audit: There shall be a Call Center Operational Audit

conducted in accordance with the provisions of **Attachment F** to this Stipulation.

15. **Tank Painting Tracker:** The Signatories agree that MAWC will establish a regulatory asset or liability for tank painting and inspection expense. The regulatory asset or liability will increase or decrease each year for the difference between the actual tank painting and inspection expense and the amount included in rates: \$1,975,173. In the Company's next rate case, the deferred balance will be amortized over 5 years. There shall be no rate base treatment on any balance. The tracker will be maintained through the effective date of rates resulting from MAWC's next general rate case.

16. **Main Extensions:** MAWC's Tariff Rule 23 (Extension of Company Mains) shall be modified to remove the 120-day time frame, remove the 4x annual revenue requirement in all instances, and implement a 75/25 sharing mechanism as to total costs state-wide. Sample tariff sheets for this purpose are attached to this Stipulation as **Attachment G**.

17. **Assistance to Troubled Systems:** Costs related to assistance provided to troubled systems shall be amortized over 60 months.

18. **Customer Programs:** MAWC will participate in the Critical Needs Program and the Rehousing Pilot Program. MAWC will provide \$250,000 of annual funding to the Critical Needs Program and \$100,000 of annual funding to the Rehousing Pilot Program. Such funding will be shared 50/50 between the Company and its customers.

19. **Withdrawals:** MAWC withdraws, without prejudice, its request for a revenue stabilization mechanism pursuant to Section 386.266.4, RSMo, its request for a bad debt expense tracker, its request for a production cost tracker, its request for a depreciation deferral mechanism, and its request for a post-in-service carrying cost capitalization mechanism.

General Terms

20. Unless otherwise explicitly provided herein, none of the Signatories shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost of service or valuation determination or cost allocation, rate design, revenue recovery, or revenue-related methodology. Except as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding. This Stipulation has resulted from extensive negotiations among the parties, and the terms hereof are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a party objects, then this Stipulation shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

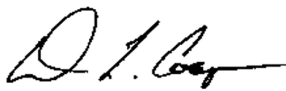
21. In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §386.500, and their respective rights to judicial review pursuant to §386.510, as to the issues settled by this Stipulation only. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. These waivers do not apply to any issues not explicitly addressed by this Stipulation. The Signatories agree that all discussions, suggestions, or memoranda reviewed or discussed, related to this Stipulation shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

22. This Stipulation and its attachments contain the entire agreement of the Signatories concerning the issues addressed herein.

23. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory powers which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information.

WHEREFORE, the Signatories respectfully request the Commission to issue an Order approving this Stipulation and Agreement and authorizing the Company to file tariffs to implement the terms hereof.

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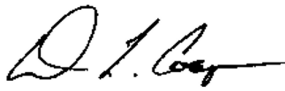
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on March 3, 2023, to counsel for all parties.



Residential Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
5/8"	3,428,899	1,322,938	4,751,837
3/4"	292,675	18,979	311,654
1"	127,597	71,329	198,927
1.5"	9,082	1,789	10,871
2.0"	12,350	1,565	13,915
3.0"	251	36	287
4.0"	302	0	302
6.0"	290	0	290
8.0"	515	12	527
10.0"	36	0	36
12.0"	0	0	0
Low Income			0
Total	3,871,997	1,416,649	5,288,645

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate A Volume	23,020,060	5,456,895	28,476,955
Block 1 - Mexico		115,292	115,292
Block 2 - Mexico		48,386	48,386
Block 3 - Mexico		9,176	9,176
Total	23,020,060	5,629,750	28,649,809

	St. Louis	Other MO	Total
Flat Rate Billings	Monthly	Monthly	Company
Rankin/Whitebranch		2,690	2,690
Table Rock		370	370
Monsees Lake		768	768
Total	0	3,828	3,828

Commercial Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
5/8" - Rate A	86,338	66,854	153,192
3/4" - Rate A	34,542	1,929	36,471
1" - Rate A	24,945	22,078	47,023
1.5" - Rate A	12,415	4,128	16,542
2.0" - Rate A	36,989	19,920	56,909
3.0" - Rate A	3,204	609	3,813
4.0" - Rate A	2,220	948	3,168
6.0" - Rate A	1,966	201	2,167
8.0" - Rate A	2,740	179	2,919
10.0" - Rate A	647	17	664
12.0" - Rate A	0	0	0
5/8" - Rate J	0	0	0
3/4" - Rate J	12	0	12
1" - Rate J	12	12	24
1.5" - Rate J	48	0	48
2.0" - Rate J	190	231	420
3.0" - Rate J	72	60	132
4.0" - Rate J	179	84	263
6.0" - Rate J	107	133	240
8.0" - Rate J	212	24	236
10.0" - Rate J	96	36	132
12.0" - Rate J	0	0	0
Total	206,935	117,441	324,376

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate A Volume	7,213,898	2,305,648	9,519,546
Rate J Volume	1,059,355	605,737	1,665,092
Total	8,273,253	2,911,384	11,184,638

Industrial Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
5/8" - Rate A	0	334	334
3/4" - Rate A	0	48	48
1" - Rate A	0	348	348
1.5" - Rate A	0	12	12
2.0" - Rate A	1	873	874
3.0" - Rate A	11	74	85
4.0" - Rate A	18	97	115
6.0" - Rate A	11	64	75
8.0" - Rate A	0	48	48
10.0" - Rate A	2	0	2
12.0" - Rate A	0	0	0
5/8" - Rate J	0	113	113
3/4" - Rate J	0	12	12
1" - Rate J	0	60	60
1.5" - Rate J	12	0	12
2.0" - Rate J	120	360	480
3.0" - Rate J	168	74	242
4.0" - Rate J	324	246	570
6.0" - Rate J	360	123	483
8.0" - Rate J	108	60	168
10.0" - Rate J	72	0	72
12.0" - Rate J	0	0	0
Total	1,207	2,946	4,153

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate A Volume	7,822	132,665	140,487
Rate J Volume	2,103,593	2,340,795	4,444,388
Special Contract 1		790,200	790,200
Special Contract 2		195,285	195,285
Total	2,111,415	3,458,946	5,570,361

Other Public Authority Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
5/8" - Rate A	1,780	3,792	5,572
3/4" - Rate A	2,050	227	2,277
1" - Rate A	1,717	2,218	3,935
1.5" - Rate A	914	1,007	1,921
2.0" - Rate A	2,954	4,539	7,493
3.0" - Rate A	457	551	1,008
4.0" - Rate A	329	539	867
6.0" - Rate A	467	96	563
8.0" - Rate A	156	108	264
10.0" - Rate A	36	0	36
12.0" - Rate A	0	0	0
5/8" - Rate J	0	0	0
3/4" - Rate J	0	0	0
1" - Rate J	0	24	24
1.5" - Rate J	0	0	0
2.0" - Rate J	0	83	83
3.0" - Rate J	0	12	12
4.0" - Rate J	0	36	36
6.0" - Rate J	0	0	0
8.0" - Rate J	24	36	60
10.0" - Rate J	34	0	34
12.0" - Rate J	0	0	0
Total	10,918	13,268	24,186

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate A Volume	386,616	484,467	871,083
Rate J Volume	96,448	181,760	278,208
Total	483,064	666,227	1,149,291

Sale for Resale Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
5/8"	0	0	0
3/4"	0	0	0
1"	0	24	24
1.5"	0	0	0
2.0"	0	156	156
3.0"	0	48	48
4.0"	0	108	108
6.0"	0	72	72
8.0"	0	12	12
10.0"	0	0	0
12.0"		0	0
Total	0	420	420

	St. Louis	Other MO	Total
Fixed Charge	Monthly	Monthly	Company
Special Contract B (Fixed)	12		12
Total	12	0	12

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate B Volume	1,615,664	1,131,783	2,747,447
Special Contract A	1,209,793		1,209,793
Special Contract B	1,219,594		1,219,594
Special Contract C		19,250	19,250
Total	4,045,051	1,151,032	5,196,083

Private Fire Water Billing Determinants

	St. Louis	Other MO	Total
Meter Billings	Monthly	Monthly	Company
2.0"	1,620	1,012	2,632
3.0"	12	36	48
4.0"	6,631	4,195	10,826
6.0"	27,494	8,771	36,265
8.0"	15,964	5,245	21,209
10.0"	396	810	1,206
12.0"	984	252	1,236
Hydrant	456	3,000	3,456
Total	53,557	23,321	76,878

	St. Louis	Other MO	Total
Usage (1,000 Gallons)	Monthly	Monthly	Company
Rate A Fire Volume	52,275	4,269	56,545
Total	52,275	4,269	56,545

Residential Sewer Billing Determinants

Unit Billings	Arnold	Other MO	Total
Arnold	101,380		101,380
Other Sewer High		71,817	71,817
Other Sewer Low		88,976	88,976
Taos		5,169	5,169
Hallsville		8,052	8,052
Monsees Lake		768	768
Total	101,380	174,782	276,162

Usage (1,000 Gallons)	Block 1	Block 2	Total
Arnold	505,846	35,506	541,352
Total	505,846	35,506	541,352

Commercial Sewer Billing Determinants

Meter Billings	Arnold	Other MO	Total
Arnold	7,798		7,798
Minimum Charge - High		860	860
Other Sewer High 5/8"		538	538
Other Sewer High 3/4"		0	0
Other Sewer High 1"		372	372
Other Sewer High 1.5"		168	168
Other Sewer High 2"		198	198
Other Sewer Low 5/8"		3,589	3,589
Other Sewer Low 3/4"		0	0
Other Sewer Low 1"		824	824
Other Sewer Low 1.5"		754	754
Other Sewer Low 2"		821	821
Other Sewer Low 3"		93	93
Other Sewer Low 4"		48	48
Other Sewer Low 6"		12	12
Taos		132	132
Hallsville		612	612
Total	7,798	9,021	16,818

Usage (1,000 Gallons)	Block 1	Block 2	Total
Arnold	24,067	219,857	243,924
Other Sewer High	6,637	22,733	29,370
Other Sewer Low	18,997	102,794	121,791
Total	49,701	345,383	395,084

Industrial Sewer Billing Determinants

Meter Billings	Arnold	Other MO	Total
Other Sewer Low 5/8"		0	0
Other Sewer Low 3/4"		0	0
Other Sewer Low 1"		0	0
Other Sewer Low 1.5"		0	0
Other Sewer Low 2"		0	0
Other Sewer Low 3"		12	12
Other Sewer Low 4"		0	0
Total	0	12	12

Usage (1,000 Gallons)	Block 1	Block 2	Total
Arnold			0
Arnold Speical 1			0
Growth - Arnold			0
Other Sewer Low	72	1,417	1,489
Total	72	1,417	1,489

Other Public Authority Sewer Billing Determinants

Meter Charge	Arnold	Other MO	Total
Arnold	11,618		11,618
Minimum Charge - High		12	12
Other Sewer High 1"		36	36
Other Sewer High 2"		24	24
Other Sewer High 3"		24	24
Other Sewer Low 5/8"		168	168
Other Sewer Low 1"		114	114
Other Sewer Low 1.5"		96	96
Other Sewer Low 2"		102	102
Taos		12	12
Hallsville		84	84
Total	11,618	672	12,290

Usage (1,000 Gallons)	Block 1	Block 2	Total
Arnold	362	122	484
Other Sewer High	439	2,189	2,628
Other Sewer Low	1,626	3,331	4,957
Total	2,427	5,642	8,069

Pension Tracker Mechanism and OPEB Tracker Mechanism

A. The Signatories agree that the rates established in this case for the MAWC pension plan include an allowance of \$1,819,551. (All amounts are stated after application of a payroll expense O&M allocation factor.) The difference between the amount of pension expense included in MAWC's rates and the amount funded by MAWC shall be included in the Company's rate base in future rate proceedings, and the balance existing at the later of the end of the test year, the test year update or true-up, as applicable in the Company's next rate case shall be amortized to expense over a five-year period. The pension tracker balance resulting from this case will start to be booked in the month following the effective date of new rates in this rate case, and will continue to be booked until the end of the month for the effective date of new rates in the Company's next rate case. The Company shall be authorized to record as a regulatory asset/liability, as appropriate, the difference between the pension expense used in setting rates and the pension expense as recorded for financial reporting purposes as determined in accordance with GAAP (or such standard as the FASB may issue to supersede, amend, or interpret the existing standards). A portion of the service cost component will be capitalized, based on the labor capitalization percentage, and the non-service cost components will be expensed. All portions will be recorded to O&M for regulatory purposes.

B. The cumulative pension tracker amount in MAWC's rate base as of December 31, 2022, is a \$9,599,085 reduction to rate base, and the annual amortization of that amount to expense is (\$1,919,817) (reflected as an annual reduction in expense). No Service Company pension costs are included in MAWC's pension tracker balance in this case.

C. The Company shall be allowed rate recovery for prudent contributions it makes to its pension trust that exceed the ERISA minimum for any of the following reasons:

- i) The minimum required contribution is insufficient to avoid the benefit restrictions

specified for at-risk plans pursuant to the Pension Protection Act of 2006, thereby causing an inability by MAWC to pay out pension benefits to recipients in its normal and customary manner, including lump sum payments; or

- ii) The minimum required contribution is not sufficient to avoid any Pension Benefit Guarantee Corporation (PBGC) variable premiums.

Prudent additional contributions made pursuant to the paragraph will increase MAWC's rate base, and will receive the regulatory treatment as described in paragraph A of this Section. MAWC shall inform Staff and Public Counsel of contributions of additional amounts to its pension trust funds pursuant to this paragraph in a timely manner. Staff, Public Counsel and other Signatories reserve the right to challenge the prudence of any additional contributions made by MAWC pursuant to this paragraph in subsequent MAWC rate proceedings.

D. The Signatories agree that rates established in this case for MAWC's OPEB expense reflect an allowance of (\$3,265,591). (All amounts are stated after application of a payroll O&M allocation factor.) The Company will fund its OPEB trusts based upon its expense as calculated for financial reporting purposes. The difference between the amount of OPEB expense included in MAWC's rates and the amount recorded on MAWC's books and funded by the Company shall be included in the Company's rate base in future proceedings, and the balance existing at the later of the end of the test year, the test year update or true-up, as applicable in the Company's next rate case shall be amortized to expense over a five-year period. The OPEB tracker balance resulting from this case will start to be booked in the month following the effective date of new rates in this rate case, and will continue to be booked until the end of the month for the effective date of new rates in the Company's next rate case. The Company shall be authorized to record as a regulatory asset/liability, as appropriate, the difference between the OPEB expense used in setting rates and the OPEB expense as recorded for financial reporting purposes as determined in accordance with GAAP (or such standard as the FASB may issue to supersede, amend, or interpret the existing standards). A

portion of the service cost component will be capitalized, based on the labor capitalization percentage, and the non-service cost components will be expensed. All portions will be recorded to O&M for regulatory purposes.

E. The cumulative OPEB tracker amount in MAWC's rate base as of December 31, 2022, is a \$6,294,904 reduction to rate base and the annual amortization of that amount to expense is (\$1,258,981) (reflected as an annual reduction in expense). No Service Company OPEB costs are included in MAWC's OPEB tracker balance in the case.

F. The provisions of FAS 158 may require certain adjustments to the prepaid pension asset/OPEB asset and/or accrued liability with a corresponding adjustment to equity (i.e. decreases/increases to Other Comprehensive Income). The Company will be allowed to set up a regulatory asset/liability to offset any adjustments that would otherwise be recorded to equity caused by applying the provisions of FAS 158 or any other FASB statement or procedure that requires accounting adjustments to equity due to the funded status or other attributes of the pension or OPEB plans. The Signatories acknowledge that the adjustments described in this paragraph will not increase or decrease rate base.

G. Nothing in this Agreement is intended to impair the ability of any Signatory in MAWC's next rate case proceeding to challenge the prudence of the Company's calculated levels of pension and OPEBs expenses that it proposes to recover from the tracker mechanisms.

MISSOURI AMERICAN WATER COMPANY – Water
Schedule of Depreciation Rates
WR-2022-0303

USOA Account Number	Account Description	Remaining Life Depreciation Rate %	Average Service Life (Years)	Iowa Curves	% Net Salvage
<u>Source of Supply</u>					
311.0	Structures & Improvements	1.97%	60	R4	-25%
312.0	Collecting & Impoundment Reservoirs	0.35%	85	R3	0%
313.0	Lake, River & Other Intakes	3.57%	70	S0.5	-10%
314.0	Wells & Springs	2.52%	55	R1.5	-5%
315.0	Infiltration Galleries and Tunnels	1.77%	60	R2.5	0%
316.0	Supply Mains	1.45%	80	R3	-25%
317.0	Miscellaneous Source of Supply – Other	4.97%	25	SQ	0%
<u>Pumping Plant</u>					
321.0	Structures & Improvements	3.95%	75	R2.5	-15%
322.0	Boiler Plant Equipment	3.05%	37	R3	-5%
323.0	Power Generation Equipment	3.05%	37	R3	-5%
324.0	Steam Pumping Equipment	1.89%	47	R1	-10%
325.0	Electric Pumping Equipment	1.89%	47	R1	-10%
326.0	Diesel Pumping Equipment	1.89%	47	R1	-10%
327.0	Hydraulic Pumping Equipment	1.89%	47	R1	-10%
328.0	Other Pumping Equipment	1.89%	47	R1	-10%
<u>Water Treatment Plant</u>					
331.0	Structures & Improvements	2.34%	80	R2.5	-15%
332.0	Water Treatment Equipment	2.18%	48	R1.5	-20%
333.0	Miscellaneous Water Treat, Other	3.33%	30	SQ	0%
<u>Transmission and Distribution</u>					
341.0	Structures & Improvements	1.49%	55	R2.5	-20%
341.1	Structures & Improve - Special Crossing	1.49%	55	R2.5	-20%
342.0	Distribution Reservoirs & Standpipes	1.70%	65	R2.5	-25%
343.0,1,2,3	Transmission & Distribution Mains	1.39%	90	R2.0	-30%
344.0	Fire Mains	1.56%	85	S1	-30%
345.0	Customer Services	2.92%	65	R2.0	-100%
346.0	Customer Meters	2.40%	42	R1.5	-10%
347.0	Customer Meter Pits & Installation	2.40%	42	R1.5	-10%
348.0	Fire Hydrants	1.85%	65	R1.5	-30%
349.0	Misc Trans & Dist – Other	2.96%	50	R3	0%
<u>General Plant</u>					
390.0	Structures & Improve - Shop & Garage	3.02%	55	R2.5	-20%
390.1	Structures & Improve - Office Buildings	2.09%	47	S0	-20%
390.3	Structures & Improve – Miscellaneous	3.72%	55	R2.0	-20%
390.9	Structures & Improve – Leasehold	2.75%	25	R4	0%
391.0	Office Furniture	3.49%	20	SQ	0%
391.1	Computer & Peripheral Equipment	19.06%	5	SQ	0%
391.2	Computer Hardware & Software	19.06%	5	SQ	0%
391.25	Computer Software	5.00%	20	SQ	0%
391.26	Personal Computer Software	10.00%	10	SQ	0%
391.3	Other Office Equipment	10.46%	15	SQ	0%
391.4	BTS Initial Investment	5.00%	20		0%
392.1	Transportation Equipment - Light trucks	5.57%	9	L1.5	15%
392.2	Transportation Equipment - Heavy trucks	0.00%	10	L1.5	15%
392.3	Transportation Equipment – Autos	0.00%	6	L1.5	15%
392.4	Transportation Equipment – Other	6.15%	15	S3	5%
393.0	Stores Equipment	3.88%	25	SQ	0%
394.0	Tools, Shop, Garage Equipment	3.73%	20	SQ	0%
395.0	Laboratory Equipment	3.90%	15	SQ	0%
396.0	Power Operated Equipment	3.79%	12	L1	20%
397.1	Communication Equip - Non Telephone	5.76%	15	SQ	0%
397.2	Communication Equip – Telephone	8.94%	10	SQ	0%
398.0	Miscellaneous Equip	6.48%	15	SQ	0%
399.0	Other Tangible Equipment	2.43%	20	SQ	0%

MISSOURI AMERICAN WATER COMPANY – Sewer
Schedule of Depreciation Rates
WR-2022-0303

USOA Account Number	Account Description	Remaining Life Depreciation Rate %	Average Service Life (Years)	Iowa Curves	% Net Salvage
<u>Collection Plant</u>					
351	Structures & Improvements	2.03%	50	R3	-5%
352.1	Collection Sewers (Force)	1.64%	60	R2.5	-10%
352.2	Collection Sewers (Gravity)	1.58%	70	R3	-20%
353	Services To Customers	2.87%	55	R2.0	-40%
354	Flow Measuring Devices	3.38%	25	S2.5	0%
356	Other Collection Equipment	3.15%	50		0%
357	Communication Equipment	6.67%	15	SQ	0%
<u>Pumping Plant</u>					
361	Structures & Improvements	2.17%	45	R3	0%
362	Receiving Wells	2.87%	30	L2.5	0%
363	Electric Pumping Equip, (Includes Generators)	4.31%	15	L1.5	-5%
364	Diesel Pumping Equipment	4.31%	15	L1.5	-5%
365	Other Pumping Equipment	4.31%	15	L1.5	-5%
<u>Treatment and Disposal Plant</u>					
371	Structures & Improvements	1.43%	60	R2.5	-5%
372	Treatment & Disposal Equipment (Includes pumps, blowers, generators)	3.97%	30	S0.5	-20%
373	Plant Sewers	1.60%	50	R2.5	0%
374	Outfall Sewer Lines	3.04%	35	L2.0	0%
<u>General Plant</u>					
390.0	Structures & Improve – General	3.11%	35	R2.5	-5%
390.9	Structures & Improve – Leasehold	5.00%	20	R4	0%
391.0	Office Furniture	5.00%	20	SQ	0%
391.1	Computer & Peripheral Equipment	20.00%	5	SQ	0%
391.2	Computer Hardware & Software	20.00%	5	SQ	0%
391.25	Computer Software	5.00%	20	SQ	0%
391.26	Personal Computer Software	10.00%	10	SQ	0%
391.3	Other Office Equipment	6.67%	15		0%
391.4	BTS Initial Investment	5.00%	20		0%
392.0	WW Transportation Equipment	3.45%	10	L2.5	5%
392.1	Transportation Equipment - Light trucks	3.45%	10	L2.5	5%
392.2	Transportation Equipment - Heavy trucks	3.45%	10	L2.5	5%
392.3	Transportation Equipment – Autos	3.45%	10	L2.5	5%
392.4	Transportation Equipment – Other	3.45%	10	L2.5	5%
393.0	Stores Equipment	4.00%	25	SQ	0%
394.0	Tools, Shop, Garage Equipment	5.00%	20	SQ	0%
395.0	Laboratory Equipment	6.67%	15	SQ	0%
396.0	Power Operated Equipment	7.71%	15	L2.5	0%
397.1	Communication Equip - Non Telephone	6.67%	15	SQ	0%
397.2	Communication Equip – Telephone	6.67%	15	SQ	0%
398.0	Miscellaneous Equip	6.43%	15	SQ	0%
399.0	Other Tangible Equipment	0.00%	30	R2.0	0%

MAWC Call Center Operational Audit

Purpose:

The purpose of this call center operational audit is to evaluate the conditions and decisions made by the Customer Care Team (CCT) and Customer Insight Team (CIT) (Collectively referred to as “Customer Team”) of the Customer Service Organization of American Water Works Service Company that may have contributed to the decreased performance of the call centers that service MAWC’s customers from July 2020 to the present (“relevant time period”). In particular, this audit will identify and evaluate the Customer Team’s decision-making process utilized to address decreased and increased performance related to the scope of the audit during the relevant time period, and will evaluate the Customer Team’s operating practices, systems, and procedures and develop recommendations to ensure effective practices in place as well as those that may be helpful in the future.

Scope:

I. Geographic Routing:

The audit will include an analysis of the Customer Team’s decision to no longer provide Geographic Routing for its call centers that handle MAWC customer calls. This will include an analysis of the call routing technology employed by the Customer Team to distribute calls in the queue.

II. Customer Care Team Response:

The audit will review the Customer Team’s efforts to address the Average Speed of Answer (ASA) and Abandoned Call Rate (ACR) and will include analysis of the cause for any fluctuation in the levels of ASA and ACR within the relevant time period. This will also include an analysis of the effectiveness of the Interactive Voice Response system (IVR) in assisting its customers. The audit will include an examination of how MAWC utilizes customer feedback within the Customer Care Team. That examination will look at the internal methods used to determine customer satisfaction with the call center (looking specifically at items such as survey structure, response rate, and effectiveness at measuring the intended variable) and its responsiveness to customer feedback.

III. Recruitment and Training:

The audit will review the Customer Team’s management decisions in the recruitment, hiring, and training for Customer Care Agents (CCA) as well as attrition rate and factors causing attrition. The analysis will include a review of the CCT’s process of transitioning to a remote work environment for CCA within the relevant time period as well as whether the transition to remote work impacted call center operations.

Audit Process:

The Customer Team and MAWC employees will cooperate fully with the auditor by timely providing relevant information requested to complete the audit including, but not limited to, connecting the auditors with individuals who can assist the auditor as appropriate. The selected auditor shall be retained by MAWC and provide the audit report exclusively to MAWC, which shall file the audit report confidentially with the Commission, pursuant to 20 CSR 4240-2.135(2)(A) 3 and 5. The audit will express an independent opinion that identifies observations regarding Customer Team operations related to the scope of this audit, which will include analysis of operations that impacted call center performance, with the goal towards informing MAWC, the Staff of the Missouri Public Service Commission (Staff), and the Office of the Public Counsel (OPC) of the status of the Customer Team operations and any recommendations related to the scope of this audit, including improvements to any processes, if any. The audit report shall provide recommendations regarding actions that can be taken to continue to reduce ASA and ACR levels while enhancing customer service. It shall include a prioritization of action items (low, medium, high). It shall also provide recommendations intended to prevent a reoccurrence of the identified issues to the extent possible. The audit firm conducting the audit will provide a confidential status report on the progress of the audit at least twice during the course of the audit's time frame for completion. This confidential status report will be provided to MAWC, to MO PSC Staff and the Office of the Public Counsel. The audit shall conclude within six (6) months of the auditor being selected.

Third-Party Audit Request for Proposal (RFP):

A committee comprised of an equal number of Staff, OPC and MAWC representatives shall develop a RFP for the audit to be issued by MAWC. The RFP shall be circulated internally among the committee within 120 days of the effective dates of new rates in this case. The selection of a successful bidder, if any, shall be conducted by the same committee and shall be made by majority vote. In the event the committee cannot agree to the identity of the auditor, the committee shall submit such question to the Commission for decision. The independent third-party auditor's contract shall preserve the auditor's independence by precluding Staff, OPC, or MAWC representatives from directing or influencing the audit report's conclusions. Upon completion, MAWC shall file the audit report confidentially with the Commission in the Electronic Filing Information System (EFIS).

Audit Costs:

It is expressly acknowledged that MAWC shall provide \$100,000, funded below the line (and not recovered in rates), for purposes of funding the independent third-party call center operational audit. Any additional expense beyond \$100,000, required by the Commission, will be split evenly between ratepayers and shareholders.

For ratemaking purposes, any cost in excess of \$100,000 shall be deferred to account 182.3 (other regulatory assets). This deferral will not receive a return, and will be amortized over 3 years, subject to the 50/50 split provided immediately above, in retail rates and cost of service in the first MAWC general rate case subsequent to the completion of the audit.

Missouri-American Water Company
Name of Issuing Corporation

For

Missouri Service Area
Community, Town or City

**Rules and Regulations Governing the Rendering of
Water Service**

Rule 23 – Extension of Company Mains

- A. This rule shall govern the extension of the Company's water mains after the date hereof which are necessary to serve Customers within its service area. The Company's water mains can be extended within the service territory of each of its operations within the State of Missouri either by the Company's forces, Company's contractor or by an Applicant's contractor in accordance with Company's standards and contractual requirements. For any design/installation option, the following terms and conditions shall apply:
1. When an Applicant makes a request for an extension of water main, the Company shall first determine the closest adequate and reliable source of water in its existing distribution system. The Company will then determine the sizes, types, route and location of mains, loops and other tie-ins if necessary, replacement and upsizing of existing mains if necessary to meet the Applicant's requirements, and ancillary equipment needed to serve Applicant's property. Design of the extension will be based on domestic flow requirements as stated by the Applicant and fire flow requirements as determined by the local fire authority and the direct impact of the additional domestic flow and fire flow requirements of the Applicant to the Company's existing Customers. If there is no local fire authority or the local fire authority declines to impose a flow requirement, then the fire flow requirements will be determined by the Applicant and approved by the Company. At a minimum, the fire flow requirements determined by the Applicant will meet Insurance Services Office, Inc. (ISO) standards. The local fire authority will determine fire hydrant locations unless there is no local fire authority or the local fire authority declines to locate fire hydrants, in which case the Company will determine the fire hydrant locations.
 2. The Applicant and Company shall fund the cost of the proposed water main extension at a ratio of 75/25 (i.e., 75% Applicant funded and 25% Company funded) for all districts.
 3. Applicants requesting a main extension to serve a single premises in a recorded, residential single lot development can choose the aforementioned option in Provision A.2., above, or the option whereby the Company will be responsible for all of the costs, except easement acquisition, associated with extending the main up to one hundred feet (100') (Free Extension). If the main extension required is greater than one hundred feet (100') in length, all costs above the Free Extension shall be borne by the Applicant calculated on a per-foot basis.

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* Indicates new rate or text

+ Indicates change

Date of Issue:

2023

Effective Date:

2023

Issued By:

Rich C. Svindland, President
727 Craig Road, St. Louis, MO 63141

Missouri-American Water Company
Name of Issuing Corporation

For

Missouri Service Area
Community, Town or City

**Rules and Regulations Governing the Rendering of
Water Service**

- | | |
|---|---|
| 4. The Applicant/Company funding ratio of 75/25 for all districts will only apply to the cost for the main extensions and may include, but is not limited to, all material and labor costs of piping, public fire hydrants (as applicable), valves, fittings, casing pipe, inspection fees, testing (including but not limited to: bacteriological, chlorination, de-chlorination, pressure and flushing), water used for flushing purposes, and all overheads charged to all materials, labor, services, etc. provided by the Company. | * |
| 5. The Applicant/Company funding ratio of 75/25 for all districts, shall not apply to restoration charges or easement acquisition costs. Applicant will be responsible for one hundred percent (100%) of the restoration charges and easement acquisition costs for the main extension, except the Company will be one hundred percent (100%) responsible for restoration charges related to the Free Extension. | * |
| 6. In those instances where the Company determines that the water service requirements, including supply for fire protection of the Applicant requires the reconstruction, replacement or reinforcement of the Company's existing water mains or other appurtenances (e.g. Pressure Reducing Valves, Booster Stations, Air Valves, water service lines, etc.), the Applicant will be responsible for such reconstruction, replacement or reinforcement including all the material, labor costs, engineering and engineering review, inspection fees, testing (including but not limited to: bacteriological, chlorination, de-chlorination, pressure and flushing), restoration costs, all abnormal layout or layout review costs incurred by the Company as well as all overheads charged to all materials, labor, services, etc. provided by the Company. The Applicant may also be responsible for all, or a portion, of the costs for any new booster stations, water storage tanks, and water plant upgrades that Company determines are necessary solely to provide service to the development for which the main extension is requested. | * |
| 7. The Applicant will also be required to pay all costs associated with the acquisition and preparation of any easements or permits necessary for the installation of the aforementioned facilities relating to the main extension. | * |
| 8. The Applicant or the Applicant's authorized agent shall contract with the Company for such extension in accordance with the Company's standards and contractual requirements. | * |

B. Installations by the Company or Company's Contractor: If the Applicant or Applicant's authorized agent contracts with the Company to install the main extension, the following shall apply:

- | | |
|--|--|
| 1. At the Applicant's option, the Company will either lay out the required water main extension on plans furnished by the Applicant at the cost of the Applicant, or the plans and specifications for the main extension may be prepared by the Applicant's engineer and submitted for Company approval. | |
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**Rules and Regulations Governing the Rendering of
Water Service**

2. The Company shall provide the Applicant with an estimate in the form of a written proposal, which will describe payment alternatives and all other contractual preconditions to the installation, along with a copy of the water main layout.
3. The proposal will include the costs related to the facilities specified in Provision A.1. plus the Company's anticipated costs of materials, labor, labor related expenses (such as pension and welfare costs), supervision, engineering, inspection fees, insurance, tools, easements, permits, appropriate taxes, and other miscellaneous expenses (such as stores expenses, administrative salaries, overhead expenses, transportation expenses, water used for flushing purposes and construction equipment expenses and similar expenses). The Company may at its discretion charge up to five percent (5%) for contingencies. The cost contained in the proposal is based on the Company's estimate of the actual cost of the job.
4. If the Applicant has chosen the option provided in Provision A.2., above, the Applicant in any of the Company's districts shall provide payment of seventy-five percent (75%) of the estimated costs for any project. The Applicant shall pay to Company such estimated costs prior to the Company scheduling the work. If after completion of the main extension, the initial payment provided to the Company is above the Applicant's percent of the total actual cost of the project, as determined by the Company, the Company will refund the excess to the Applicant. If the initial payment provided by the Applicant to the Company is below the Applicant's percent of the total actual cost of the project, the Company will bill the shortfall to the Applicant.
5. For Applicants who have chosen the option of a one hundred foot (100') Free Extension:
 - a) If the Applicant has chosen the option of a one hundred foot (100') Free Extension, as provided for in Provision A.3. above, and the extension will be one hundred feet (100') or less in length, then the Company will perform the necessary construction to extend its main(s).
 - b) If the Applicant has chosen the option of a one hundred foot (100') Free Extension and the extension is greater than one hundred feet (100') in length, the Applicant shall provide payment of one hundred percent (100%) of the estimated costs in excess of the one hundred foot (100') Free Extension, if any, as provided by the Company prior to the Company scheduling the work. If after completion of the main extension, the initial payment provided to the Company is above the Applicant's share of the total actual cost of the project, the Company will refund the excess to the Applicant. If the initial payment provided by the Applicant to the Company is below the Applicant's share of the total actual cost of the project, the Company will bill the shortfall to the Applicant.

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**Rules and Regulations Governing the Rendering of
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- C. **Installations by Applicant's Contractor (Developer Lay Option):** The Applicant, or the Applicant's agent, may elect to use its own contractor to construct the main extension (also known as the Developer Lay option). Under this option, the Applicant's contractor must be approved by the Company and the following terms and conditions shall apply:
1. At the Applicant's option, either the Company will lay out the required water main extension on plans furnished by the Applicant, or the plans and specifications will be prepared by the Applicant's engineer and submitted for Company approval.
 2. Upon request, the Company will provide written specifications and other related documents for the proposed extension and a Developer Lay Proposal for the installation by Applicant's contractor, along with a copy of the water main layout.
 3. The Developer Lay Proposal costs will include the Company's estimated costs of materials, labor, inspection fees, and other miscellaneous expenses such as stores expenses, administrative salaries, overhead expenses, transportation expenses, water used for flushing purposes and construction equipment expenses and similar expenses.
 4. The Applicant, or the Applicant's agent, shall execute a Main Extension Contract with the Company on forms provided by the Company. Upon completion of the main extension, the Applicant, or the Applicant's agent, shall agree to convey the completed main extension and necessary easements to the Company on the terms and conditions stated in the Main Extension Contract.
 5. Upon execution of the Main Extension Contract by the Applicant and the Company, the Applicant will pay to the Company the total estimated Developer Lay Proposal costs as determined in Provision C.3., above. Applicant will also provide all additional information as detailed in the Main Extension Contract.
 6. Upon completion of the Main Extension, and prior to acceptance of the extension by the Company, the Applicant will provide to the Company a final statement of Applicant's costs to construct such extension. This final statement of costs will be added to the actual costs for Company to provide services as per the Developer Lay Proposal. Upon acceptance of the main extension, the Company will then issue payment to the Applicant of twenty-five percent (25%) pursuant to Provision A.2, above. The Company will adjust its payment based on the shortfall or excess of the difference between the actual Developer Lay costs and the Developer Lay Proposal payment made by the Applicant pursuant to Provision C.5, above. *
 7. For Applicants who have chosen the option of a one hundred foot (100') Free Extension:
 - a) If the Applicant has chosen the option of a one hundred foot (100') Free Extension, pursuant to Provision A.3. above, and the extension will be one hundred feet (100') or less in length, then *

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**Rules and Regulations Governing the Rendering of
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Company will perform the necessary construction to extend its main(s).

- b) If the Applicant has chosen the option of a one hundred foot (100') Free Extension and the extension is greater than one hundred feet (100') in length, then prior to the Applicant scheduling the main extension, the Applicant shall advance payment equal to the Company's total estimated Developer Lay Proposal costs (Provision C.3. above). After completion of the main extension by the Applicant, Applicant must provide support to the Company of the total costs incurred by Applicant, exclusive of the advanced payment for the Developer Lay Proposal costs. Upon verification of the costs supplied by Applicant, Company will add those costs to the actual Developer Lay Proposal costs it incurred and divide the sum by the number of feet in the main extension project to determine a cost per linear foot. The cost per foot will be multiplied by 100 to arrive at the cost of the one hundred foot (100') Free Extension to be borne by the Company. The Company will add the amount of the one hundred foot (100') Free Extension to the advanced payment made by Applicant, in accordance with Provision C.3. above, and subtract the actual Developer Lay Proposal costs incurred by the Company to arrive at an amount to be paid to, or by, the Applicant.

As an example for Provision C.7.b), above:

Applicant pays to Company \$500 for estimated total Developer Lay Proposal costs
Applicant pays his own contractor \$1,000
Actual Developer Lay Proposal costs incurred by Company are \$200
Total Main Extension in feet is 400 feet

Calculation:

	\$1,000.00	(Cost incurred by Applicant exclusive of advanced payment for Developer Lay Proposal)
Plus	200.00	(Actual Developer Lay Proposal Costs)
Equals	\$1,200.00	
Divide by	400	(Main Extension in Linear Feet)
Equals	\$3.00	per foot
Multiply by	100	
Equals	\$300.00	(Cost for first 100 linear feet that Company will absorb)
Add	\$500.00	(Amount Applicant advanced to the Company for estimated Developer Lay Proposal costs)
Subtract	\$200.00	(Actual Developer Lay Proposal Costs)
	\$600.00	Amount Company pays to Applicant

D. Miscellaneous Provisions

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Date of Issue: August 26, 2011

Effective Date:

October 15, 2011

Issued By: Frank Kartmann, President
727 Craig Road, St. Louis, MO 63141

Missouri-American Water Company
Name of Issuing Corporation

For

Missouri Service Area
Community, Town or City

**Rules and Regulations Governing the Rendering of
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1. Main extensions made under this rule shall be and remain the property of the Company.
2. The Company reserves the right to further extend the main and to connect mains on intersecting streets and easements. If the Company extends the main at its own cost, Applicant shall not be entitled to a Customer Frontage Refund if new Customers connect to that part of the main extension funded by the Company.
3. The size and type of material of the main extensions made under this rule shall be determined by the Company and sized to meet water service requirements, including supply for fire protection, of the Applicant. If the Company chooses to increase the size of the extension in order to meet the Company's overall system requirements beyond what is necessary to meet water service requirements, including supply for fire protection, of the Applicant, all additional costs caused by the larger size of pipe shall be borne by the Company.
4. No interest will be paid by the Company on payments made by the Applicant for the main extension.
5. All main extensions made under this rule must be installed in easements or right-of-way as determined by the Company.
6. If extensions are required on private roads, streets, through private property, or on private property adjacent to public right-of-way, a proper deed of easement, acceptable to the Company must be furnished to the Company without cost to the Company, as described in the Main Extension Contract.
7. Company main extensions shall be determined by the Company and installed to permit Company Service Lines and Customer Service Lines to be installed in accordance with the Company's installation requirements for water service lines.
8. In determining the length of main extensions, the main shall be extended to cover fully the frontage of the subdivision lot or property to be served, and if the last lot to be served is a corner lot or a lot immediately adjacent to a corner lot, the terminal point of the main extension made hereunder shall be located so that the water main installed hereunder ties in with the existing water main located in the intersecting street; and further provided that if there is no main located in the intersecting street, the terminal point of the main extension made hereunder shall be located at the nearest right-of-way line of the intersecting street. When the Company main extension is installed in an easement on private property or in public right-of-way, within the boundaries of a multi-lot subdivision, the end of each main extension shall be terminated near the farthest property line. The Company may shorten the length of the main extension that the Applicant would otherwise be required to make under this provision, if, in the Company's judgment, the main should not be extended further due to pressure, volume or water quality concerns or cannot physically be extended further.
9. In the event Company determines that the main should not be extended by the Applicant to the full extent otherwise required by these rules, the Company shall nevertheless require the Applicant to

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Missouri Service Area
Community, Town or City

**Rules and Regulations Governing the Rendering of
Water Service**

provide all necessary easements commensurate with the main extension as originally proposed by the Applicant.

10. Water main extensions must be installed in accordance with the Company's then current specifications and standards.
11. At the Company's discretion, the Company, the Company's contractor or an Applicant's contractor in accordance with Company's standards and contractual requirements, will make all connections to Company's water mains.
12. At the Company's discretion, any necessary reconstruction of existing mains or installation of mains larger than twelve inches (12") in diameter will be done by Company's forces, Company's contractor or by an Applicant's contractor in accordance with the Company's standards and contractual requirements.
13. The Company reserves the right to assess additional charges if the Company is required to create multiple layouts or to perform multiple reviews pursuant to an Applicant's request.

E. Customer Frontage Charge Refunds

1. If requested by the Applicant at the time of entering into the Main Extension Contract with the Company, the Applicant shall have the option of requesting a Customer Frontage Charge Refund. The Customer Frontage Charge Refund only applies to that portion of the main extension that is to be installed by or on behalf of an Applicant to reach a public, private, commercial, government or religious development or personal dwelling described in the Main Extension Contract. The Customer Frontage Charge Refund will be made to Applicant, or its assignee, subject to the following conditions:
 - a) A Customer Frontage Charge will be collected in advance from each new Customer, (in addition to the tap fee, connecting a new-metered service line) when the new Customer connects to the portion of the main extension covered by the Applicant's contract.
 - b) The Customer Frontage Charge is calculated at the rate of fifty percent (50%) of the actual per foot cost of the mains as paid by the Applicant, with appurtenances, times the front footage (front footage shall mean the property footage along the main) of the premises to be served.
 - c) No Customer Frontage Charge Refunds will be made for mains required to serve within new platted subdivisions for lots owned or controlled by the Applicant which the main extension is expressly intended to serve. Refunds may be made for lots located outside the new platted subdivision that can be served by the Applicant's main extension. Refunds for any lots may be made to Applicants who utilize the Free Extension serving recorded, residential single lot developments where the portion of the water main extension is above the Free Extension limits.
 - d) Customer Frontage Charge Refunds shall only be made for the first five (5) years after the Applicant's main extension is accepted into the Company's system. At the expiration of the five

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**Rules and Regulations Governing the Rendering of
Water Service**

- (5) year period, the refund account will be closed, and no further Customer Frontage Charge refunds will be made.
- e) The Customer Frontage Charge Refunds made by the Company shall, in no event, exceed the amount paid by the Applicant to the Company for the main extension (i.e., 75% for all projects and excluding any portion funded by the Company) regardless of whether the main extension was performed by the Company, or a contractor performed the main extension on behalf of the Applicant.
- F. This Section F is applicable only to Main Extensions in St. Louis County & St. Charles County. Because Commission jurisdiction constitutes a legislative recognition that the public interest in proper regulation of public utilities transcends municipal or county lines, and that a centralized control must be entrusted to an agency whose continually developing expertise will assure uniformly safe, proper and adequate service by the Company, no regulations or ordinances of local governments shall be permitted to impose differing construction methods (excepting local permit requirements for excavation and restoration of public rights-of-way), material selections, water main sizes or licensing qualifications of the Company's employees or of those independent contractors employed to install, replace or maintain water mains owned or to be owned by the Company when such work is performed under the supervision of or inspection by Company agents or employees, unless such requirement is adopted and approved by the Commission upon complaint alleging that such requirement is necessary for safe and adequate service and requesting uniform application throughout Company's service area.

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Date of Issue: _____, 2023 Effective Date: _____, 2023

Issued By: Rich C. Svindland, President
727 Craig Road, St. Louis, MO 63141

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri-American Water	)	
Company's Request for Authority to Implement	)	Case No. WR-2022-0303
General Rate Increase for Water and Sewer	)	
Service Provided in Missouri Service Areas.	)	

STIPULATION AND AGREEMENT
AS TO RATE DESIGN AND CLASS COST OF SERVICE

COME NOW Missouri-American Water Company (“MAWC” or the “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”), the Midwest Energy Consumers Group, City of St. Joseph, Public Water Supply District No. 2 of Andrew County, City of Riverside, the Missouri Industrial Energy Consumers, and Consumers Council of Missouri (collectively, the “Signatories”), by and through their respective counsel, and, for their *Stipulation and Agreement as to Rate Design and Class Cost of Service* (this “Stipulation”), respectfully state as follows to the Missouri Public Service Commission (“Commission”):

1. The Empire District Electric Company d/b/a Liberty, Sunnydale Properties, and Triumph Foods, LLC are not Signatories to this Stipulation. However, counsel for each have stated that they do not object to this Stipulation.

2. This Stipulation is being entered into for the purpose of settling issues 13 and 14, as described in the *List of Issues, List and Order of Witnesses, Order of Opening, and Order of Cross-Examination* filed in this case on February 16, 2023.

3. **Admission of Testimony:** The Signatories consent to the admission of, and request that the Commission admit into the record in this proceeding, without the need for witnesses to take the stand, all written testimony that has been filed herein.

4. **Rate Design and Revenue Allocations:** The agreed to distribution of the rate

change resulting from this case, resulting volumetric rates, as well as the agreed to customer charges, are reflected in **Attachment A** (water) and **Attachment B** (sewer).

5. **Cost of Service:** The Company agrees in the next general rate case to file its two-step cost of service analysis filed in this case and to file an additional cost-of-service analysis based on a single step allocation process to customer class that was used in Case No. WR-2017-0285 (referred to as the GF model). The Company agrees to benchmark the two modeling approaches which will include a comparison of allocated costs by function and classification, as well as a detailed discussion of the differences between models.

6. **Community Data:** MAWC agrees to meet with Staff, OPC, and any interested stakeholders at least three times before it files its next general rate case to discuss MAWC specific community data as it pertains to Rate A customers in both districts. These meetings shall be completed six months before MAWC files its next general rate case. Topics for discussion include, but are not limited to: primary bill usage frequency distribution data at various intervals (annually, monthly, etc.); secondary census tract information (or other relevant aggregated demographic data); identifying rough approximations of customer types (residential, non-residential) within Rate A; and an emphasis on low income and/or retiree customers. MAWC agrees to make aggregated data (non-personal data) results available to stakeholders no later than when it files its next rate case.

General Terms

7. Unless otherwise explicitly provided herein, none of the Signatories shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost of service or valuation determination or cost allocation, rate design, revenue recovery, or revenue-related methodology. Except as explicitly provided herein,

none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding. This Stipulation has resulted from extensive negotiations among the parties, and the terms hereof are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a party objects, then this Stipulation shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

8. In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Signatories waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §386.500, and their respective rights to judicial review pursuant to §386.510, as to the issues settled by this Stipulation only. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. These waivers do not apply to any issues not explicitly addressed by this Stipulation. The Signatories agree that all discussions, suggestions, or memoranda reviewed or discussed, related to this Stipulation shall be privileged and shall not be subject to discovery, admissible in evidence, or in any way used, described or discussed.

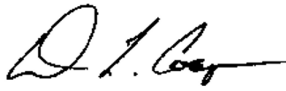
9. This Stipulation and its attachments contain the entire agreement of the Signatories concerning the issues addressed herein.

10. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory

powers which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information.

WHEREFORE, the Signatories respectfully request the Commission to issue an Order approving this Stipulation and Agreement and authorizing the Company to file tariffs to implement the terms hereof.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on March 10, 2023, to counsel for all parties.



WATER RATES**Meter Charges**

Meter Size	Rate A	Rate B	Rate J
5/8"	\$10.00	\$10.00	\$24.53
3/4"	\$13.61	\$13.61	\$33.38
1"	\$18.42	\$18.42	\$45.19
1.5"	\$30.47	\$30.47	\$74.73
2.0"	\$44.92	\$44.92	\$110.18
3.0"	\$79.00	\$79.00	\$193.77
4.0"	\$126.79	\$126.79	\$310.98
6.0"	\$247.19	\$247.19	\$606.30
8.0"	\$421.71	\$421.71	\$1,034.36
10.0"	\$708.57	\$708.57	\$1,737.95
12.0"	\$850.28	\$850.28	\$2,085.54
Flat Rate	\$43.50		

Private Fire Charges

Meter Size	Rate
2.0"	\$7.80
3.0"	\$25.17
4.0"	\$31.01
6.0"	\$69.81
8.0"	\$124.22
10.0"	\$194.03
12.0"	\$279.42
Hydrant	\$69.82

Volumetric Charges

	Current Rates			Settlement	
	Base	WSIRA	Total	Proposed	vs. Current
St. Louis County					
Rate A	\$5.6290	\$1.2726	\$6.9016	\$7.7604	\$0.8588
Rate B	\$2.6194	\$0.4772	\$3.0966	\$2.7176	(\$0.3790)
Rate J	\$1.7797	\$0.3394	\$2.1191	\$2.0012	(\$0.1179)
Other Missouri					
Rate A	\$6.2469	\$0.7058	\$6.9527	\$8.3781	\$1.4254
Rate B	\$2.6194	\$0.2274	\$2.8468	\$2.7176	(\$0.1292)
Rate J	\$2.8268	\$0.2465	\$3.0733	\$2.9572	(\$0.1161)

Flat Rate Customers

Location	Rate
White Branch	\$43.50
Rankin Acres	\$43.50
Monsees Lake	\$43.50
Table Rock Estates	\$32.00

SEWER RATES**Customer Charges**

Meter Size	Arnold	RT 2.1	RT 3.1
Residential Flat Rate	\$39.09	\$65.36	\$53.83
Commercial Minimum		\$65.36	\$53.83
5/8"		\$65.36	\$53.83
3/4"		\$90.78	\$76.38
1"		\$132.67	\$111.63
1.5"		\$237.48	\$199.82
2.0"		\$363.26	\$305.66
3.0"		\$640.00	\$538.52
4.0"		\$1,048.59	\$882.32
6.0"		\$1,744.46	\$1,467.85

Volumetric Charges

Usage	Arnold	RT 2.1	RT 3.1
Over 5,000 Gal.	\$7.4971		
Over 6,000 Gal.		\$10.6846	\$7.6318

Notes

Sheet RT 2.1 includes Cedar Hill, Jefferson City, Cole, Callaway and Benton Counties, Emerald Pointe, Branson Canyon, Incline Village, Ozark Meadows, Platte County, Stonebridge Village, Saddlebrooke Village, Wardsville, Pevely Farms, Homestead Estates, Radcliffe Estates, Rogue Creek, Hiller's Creek, Taos, Purcell, and Monsees Lake Estates.

Sheet RT 3.1 includes Pettis County (Maplewood, Quail Run, Brooking Park, Westlake Village), Fenton, Hickory Hills, Temple Terrace, Anna Meadows, Jaxson Estates, Timber Springs, Clinton Estates, Trimble, Centennial Acres, Lawson, Garden City, Hallsville, Orrick, Eureka, Stewartville, and Smithton.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Relay Missouri Advisory)
Committees Appointment of a New Member) **File No. TO-2023-0378**

**ORDER APPOINTING NEW MEMBER OF THE RELAY MISSOURI
ADVISORY COMMITTEE**

TELECOMMUNICATIONS

§1. Generally

§7. Jurisdiction and powers of the State Commission

The Commission approved the appointment of a new member representing the deaf to the Relay Missouri Advisory Committee.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
May, 2023.

In the Matter of the Relay Missouri Advisory)
Committee's Appointment of a New Member) **File No. TO-2023-0378**

**ORDER APPOINTING NEW MEMBER OF THE RELAY MISSOURI
ADVISORY COMMITTEE**

Issue Date: May 11, 2023

Effective Date: May 21, 2023

On May 3, 2023, the Staff of the Commission filed a motion asking the Commission to approve the appointment of a new member to the Relay Missouri Advisory Committee. Staff asks the Commission to appoint James Frost as the representative for the deaf position as a term-limited member. Term-limited members serve for a three-year term. The Commission will make the requested appointment. So that the appointment will take effect as soon as possible, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. James Frost is appointed to the Relay Missouri Advisory Committee as a term-limited representative for the deaf position.
2. This order shall become effective on May 21, 2023.
3. This file shall be closed May 22, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Dippell, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Second Prudence	)	
Review of the Missouri Energy Efficiency	)	
Investment Act (MEEIA) Cycle 3 Energy	)	<u>File No. EO-2023-0180</u>
Efficiency Programs and Cycle 2 Long-	)	
Lead Projects of Union Electric Company	)	
d/b/a Ameren Missouri	)	

ORDER APPROVING STAFF'S PRUDENCE REVIEW

ELECTRIC

§13.1. Energy Efficiency

The Commission accepted Staff's Report which found no imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

EXPENSES

§22. Reasonableness generally

The Commission accepted Staff's Report which found no imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

RATES

§83. Cost elements involved

The Commission accepted Staff's Report which found no imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day of
May, 2023.

In the Matter of the Second Prudence)
Review of the Missouri Energy Efficiency)
Investment Act (MEEIA) Cycle 3 Energy)
Efficiency Programs and Cycle 2 Long-)
Lead Projects of Union Electric Company)
d/b/a Ameren Missouri)

File No. EO-2023-0180

ORDER APPROVING STAFF'S PRUDENCE REVIEW

Issue Date: May 18, 2023

Effective Date: June 17, 2023

On December 2, 2022, the Staff of the Commission (Staff) filed notice that it started its second prudence review of Union Electric Company d/b/a Ameren Missouri's costs associated with Demand-Side Programs Investment Mechanisms (DSIM) for Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects. DSIMs are authorized pursuant to Section 393.1075, RSMo, which is the Missouri Energy Efficiency Investment Act (MEEIA).

Commission Rule 20 CSR 4240-20.093(11) requires that Staff conduct prudence reviews of an electric utility's costs recovered through its DSIM no less frequently than every twenty-four months. On April 28, 2023, Staff filed its report of the prudence review, *Second Prudence Review for Cycle 3 of Costs Related to the Demand-Side Programs Investment Mechanism and Cycle 2 Long-Lead Projects for the Electric Operations of Union Electric Company, d/b/a Ameren Missouri* (Report). The Report addresses the period of October 1, 2020, through September 30, 2022, (Review Period).

This is Staff's sixth prudence review of Ameren Missouri's Rider Energy Efficiency Investment Charge (EEIC) costs. Staff examined whether Ameren Missouri prudently incurred program costs, throughput disincentive, earnings opportunity, and interest costs associated with the MEEIA 3 2016-2018 Plan and the MEEIA 2019-2021 Plan for the Review Period.

Commission Rule 20 CSR 4240-20.093(11)(B) requires Staff to file its recommendation regarding the prudence review no later than 150 days after it initiates the review. Pursuant to the same rule, other parties to the case have 160 days to request a hearing.

In a prudence review, Staff considers whether a reasonable person in the same circumstances as those the utility experienced at the time of its decisions would find that the information relied on and the processes employed for those decisions were reasonable, without the benefit of hindsight. If Staff finds the utility's reliance on either that information or those processes imprudent, Staff then considers whether that imprudence caused harm to ratepayers. During its review, Staff found no evidence of imprudence by Ameren Missouri. No responses to Staff's report were received.

The Commission finds Staff's Report regarding its prudence review of Ameren Missouri's costs recovered through its DSIM, incurred during the Review Period, to be reasonable. No party has requested a hearing or opposed or objected to Staff's recommendation. Therefore, the Commission will approve Staff's report.

THE COMMISSION ORDERS THAT:

1. Staff's Report regarding the prudence of costs recovered through its DSIM for the Review Period of October 1, 2020, through September 30, 2022, is approved.
2. This order shall become effective on June 17, 2023.
3. This file shall be closed on June 18, 2023.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of	)	
Union Electric, d/b/a Ameren Missouri, and	)	
Callaway Electric Cooperative for an Order	)	<u>File No. EO-2023-0256</u>
Approving an Addendum to a Territorial	)	
Agreement Regarding Service to	)	
Customers in Callaway County, Missouri	)	

REPORT AND ORDER APPROVING ADDENDUM TO AN EXISTING TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

§6. Territorial agreements

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

§6. Territorial agreements

§11. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day
of May, 2023.

In the Matter of the Joint Application of	)	
Union Electric, d/b/a Ameren Missouri, and	)	
Callaway Electric Cooperative for an Order	)	<u>File No. EO-2023-0256</u>
Approving an Addendum to a Territorial	)	
Agreement Regarding Service to	)	
Customers in Callaway County, Missouri	)	

**REPORT AND ORDER APPROVING ADDENDUM
TO AN EXISTING TERRITORIAL AGREEMENT**

Issue Date: May 18, 2023

Effective Date: May 28, 2023

This order approves an addendum to an existing territorial agreement between Union Electric Company, d/b/a Ameren Missouri and Callaway Electric Cooperative. The territory concerned is a single-family home located wholly within Callaway County, Missouri.

Findings of Fact

1. Callaway Electric Cooperative (CEC) is organized under Chapter 394 RSMo to provide electric service to its members located in all or part of two Missouri counties, including Callaway County, in which lies the subject territory.¹

¹ Staff Memorandum, filed April 28, p. 2 of 5.

2. On March 22, 2002, Joint Applicants entered into a territorial agreement (Territorial Agreement), which was approved by the Commission in File No. EO-2002-458 on July 28, 2002.²

3. Article 10 of the existing Territorial Agreement allows the Joint Applicants to agree, on a case-by-case basis and through an addendum to the Territorial Agreement, to allow a structure to receive service from one party even though the structure is located in the electric service territory of the other.³

4. On February 9, 2023,⁴ Ameren Missouri and CEC (Joint Applicants) filed an application for approval of an addendum (Joint Addendum No. 1) to their existing Territorial Agreement.⁵

5. Joint Addendum No. 1 would allow CEC to be the exclusive electric service provider to a new structure being built in Callaway County, Missouri.⁶

6. The Joint Applicants assert that CEC currently has adequate facilities installed on this parcel of land capable of providing the level of electric service that is anticipated and/or has been requested by the property owner, which would prevent an otherwise necessary duplication of facilities.⁷

7. The Joint Applicants' existing Territorial Agreement created exclusive electric service areas for Ameren Missouri and CEC, as between them, within Callaway and Montgomery Counties in Missouri. The parcel that is the subject of this application is

² Joint Application for Approval of Territorial Agreement Addendum, filed February 9, para. 1.

³ Joint Application for Approval of Territorial Agreement Addendum, filed February 9, para. 1.

⁴ All dates hereafter refer to 2023 unless otherwise stated.

⁵ Joint Application for Approval of Territorial Agreement Addendum, filed February 9.

⁶ Staff Memorandum, filed April 28, p. 1 of 5.

⁷ Staff Memorandum, filed April 28, p. 2 of 5.

located within the exclusive service territory of Ameren Missouri per the terms of the existing Territorial Agreement.⁸

8. CEC has an existing distribution line routed along the borderline of the subject property that is capable of being conveniently tapped in providing the requested electric service to the new home.⁹

9. Ameren Missouri does not have comparable facilities in the immediate vicinity of the subject property.¹⁰

10. The application includes a statement from the property owner expressing their desire that CEC be the provider of electric service to the property.¹¹

11. The Joint Applicants requested expedited treatment to enable CEC to provide permanent service to this property in a timely manner.¹²

12. On April 28, Staff filed its recommendation that the Commission approve the Joint Addendum No. 1 to the existing Territorial Agreement.

13. Staff further recommended the Commission order Ameren Missouri to file revised illustrative tariffs that reflect the corresponding change in its certificated electric service area in Callaway County, Missouri as identified in Schedule AJB-2 of Staff's Memorandum.¹³

14. Staff's recommendation was the only response to the Joint Applicants' application.

15. No responses or objections to Staff's recommendation were received.

⁸ Staff Memorandum, filed April 28, p. 3 of 5.

⁹ Staff Memorandum, filed April 28, p. 3 of 5.

¹⁰ Staff Memorandum, filed April 28, p. 3 of 5.

¹¹ Joint Application for Approval of Territorial Agreement Addendum, filed February 9, Appendix 10.

¹² Joint Application for Approval of Territorial Agreement Addendum, filed February 9, para. 17.

¹³ Staff Memorandum, filed April 28, p. 5 of 5.

16. The Joint Applicants requested the Commission make certain findings:
- a. CEC will have the exclusive right to furnish electric service at the location indicated in Joint Addendum No. 1.
 - b. Joint Applicants' respective service responsibilities beyond the boundaries of the Territorial Agreement will remain unaffected by the terms of Joint Addendum No. 1.
 - c. As stated in the Territorial Agreement, each Joint Applicant will retain their respective rights to serve the remaining existing customers within the exclusive electric service area of the other unless specifically modified by existing or future Commission-approved addendums.
 - d. Ameren Missouri's certificates of public convenience and necessity will not be impaired, except as specifically limited by the Territorial Agreement and its Commission-approved addenda.¹⁴
17. No party responded or objected to the Joint Applicant's request that the Commission make certain findings as described above.
18. Neither Ameren Missouri nor CEC has had any communications with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.¹⁵

Conclusions of Law

- A. Ameren Missouri is an electrical corporation subject to the jurisdiction of the Commission under Chapters 386 and 393, RSMo.¹⁶

¹⁴ Joint Application for Approval of Territorial Agreement Addendum, filed February 9, para. 18.

¹⁵ Joint Application for Approval of Territorial Agreement Addendum, filed February 9, para. 3.

¹⁶ Staff Memorandum, filed April 28, p. 2 of 5.

B. The Commission has limited jurisdiction over rural electric cooperatives, such as CEC, as specified in part in Chapter 394, RSMo. For the purpose of this case, CEC is subject to the jurisdiction of the Commission for purposes of certain territorial agreements.

C. Section 394.312, RSMo requires approval by the Commission for territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

D. Pursuant to subsection 394.312.5, RSMo, the Commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.

E. Section 394.312.5, RSMo, requires an evidentiary hearing unless the matter is resolved between the parties.

F. No party has requested a hearing, thus the Commission may make a determination without an evidentiary hearing.¹⁷

Decision

Based upon the verified pleadings and Staff's recommendation, the Commission finds that the parties have agreed to Joint Addendum No. 1 and no person has objected nor requested a hearing. The Commission concludes that Joint Addendum No. 1 to the existing Territorial Agreement, in total, is not detrimental to the public interest and will be approved.

Due to the request for expedited treatment, the Commission finds it reasonable to make this order effective in less than 30 days. The Commission further finds good cause

¹⁷ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

to waive Commission Rule 20 CSR 4240-4.017(1) in that the Joint Applicants have had no contact with the Commission regarding the application in the 150 days immediately preceding the filing of the application.

THE COMMISSION ORDERS THAT:

1. The application is approved. Joint Addendum No. 1 to the existing Territorial Agreement is approved. A copy of the addendum is attached to this order and incorporated by reference. The signatories are ordered to comply with the terms of the Joint Addendum No. 1.

2. Ameren Missouri and CEC are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to effect the terms and conditions of the First Addendum and to implement the authority granted by the Commission in this order.

3. The Commission makes no rate-making determinations in connection with its approval of Joint Addendum No. 1.

4. As requested by the Joint Applicants, the Commission will order the statements in Finding of Fact 16 supra:

- a. CEC shall have the exclusive right to furnish electric service at the location indicated in Joint Addendum No. 1.
- b. Joint Applicants' respective service responsibilities beyond the boundaries of the Territorial Agreement shall remain unaffected by the terms of Joint Addendum No. 1.
- c. As stated in the Territorial Agreement, each Joint Applicant shall retain their respective rights to serve the remaining existing customers within the exclusive electric service area of the other unless specifically modified by existing or future Commission-approved addendums.

- d. Ameren Missouri's certificates of public convenience and necessity shall not be impaired, except as specifically limited by the Territorial Agreement and its Commission-approved addenda.

5. Commission Rule 20 CSR 4240-4.017(1) is waived for the purposes of this proceeding.

6. Ameren Missouri shall file revised illustrative tariffs that reflect the corresponding change in its certificated electric service area in Callaway County, Missouri as identified in Schedule AJB-2 of Staff's Memorandum no later than June 16, 2023.

7. This order shall become effective on May 28, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Establishment of a	)	
Working Case Regarding FERC Order 2222	)	
Regarding Participation of Distributed Energy	)	<u>File No. EW-2021-0267</u>
Resource Aggregators in Markets Operated	)	
by Regional Transmission Organizations and	)	
Independent System Operators	)	

ORDER REGARDING OPPORTUNITY FOR ADDITIONAL COMMENTS, ORDER SCHEDULING WORKSHOP, AND NOTICE OF LBNL REPORT

ELECTRIC

§1. Generally

§8. Jurisdiction and powers of Federal Commissions

§9. Jurisdiction and powers of the State Commission

§46. Relations between connecting companies generally

The Commission opened a workshop file to receive input on an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC). Order No. 2222 amended FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators. The Commission had previously prohibited the operation of aggregations of retail customers (ARCs) in Missouri.

§1. Generally

§8. Jurisdiction and powers of Federal Commissions

§9. Jurisdiction and powers of the State Commission

§46. Relations between connecting companies generally

The Commission gave notice that the Lawrence Berkeley National Laboratory prepared a report, Regulation of Third-Party Aggregation in the (Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) Footprints, with particular focus on states within two regional transmission organizations, including Missouri. A copy of the report is filed in this docket.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 24th day
of May, 2023.

In the Matter of the Establishment of a	)	
Working Case Regarding FERC Order 2222	)	
Regarding Participation of Distributed Energy	)	<u>File No. EW-2021-0267</u>
Resource Aggregators in Markets Operated	)	
by Regional Transmission Organizations and	)	
Independent System Operators	)	

**ORDER REGARDING OPPORTUNITY FOR ADDITIONAL COMMENTS,
ORDER SCHEDULING WORKSHOP, AND NOTICE OF LBNL REPORT**

Issue Date: May 24, 2023

Effective Date: May 24, 2023

Background

The Commission opened this working file on February 23, 2021, and directed its Staff to investigate and recommend an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC) on September 17, 2020. That order amends FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). The Commission received comments from various stakeholders and a Staff report, and conducted a workshop on Order No. 2222 on June 29, 2021.

Previously, in an order issued on March 31, 2010, the Commission prohibited the operation of aggregations of retail customers (ARCs) in Missouri.¹ That prohibition remains in place until further order of the Commission. On August 4, 2021, the Commission issued an order offering the parties in this working docket an opportunity to comment regarding modification of the Commission's 2010 temporary ban on aggregators, as it is applied to commercial and industrial customers of electrical corporations in Missouri.

In response to the Commission's Order, the following electric utilities provided comments: Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and Evergy Metro, Inc., d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc., d/b/a Evergy Missouri West (together referred to as "Evergy"). Additionally, the Office of the Public Counsel, Enerwise Global Technologies, LLC, d/b/a CPower, Voltus, Inc. (Voltus), and Walmart, Inc. responded to the Commission's opportunity to comment. Additionally, Voltus provided reply comments in response to Ameren Missouri and Evergy's response to the Commission's questions. Staff provided a report to the Commission, summarizing the comments and outlining the positive and negative projections reflected in the comments.

Department of Energy Grant and Report

On February 2, 2022, the Commission issued a notice that it had been awarded a grant of technical assistance from the U.S. Department of Energy, pursuant to the Grid

¹ *In the Matter of an Investigation into the Coordination of State and Federal Regulatory Policies for Facilitating the Deployment of all Cost-Effective Demand-Side Savings to Electric Customers of All Classes Consistent with the Public Interest*, Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers, File No. EW-2010-0187, March 31, 2010. The order specifically states: "Demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission are prohibited from being transferred to ISO or RTO markets directly by retail customers or third party ARCs."

Modernization Lab Consortium (GMLC). The goal of the technical assistance is to help the Commission in its efforts to fairly integrate DER aggregation into the Commission's current regulatory framework, while not compromising safety, reliability, and consumer protection. Through the grant, the Lawrence Berkeley National Laboratory prepared a report, *Regulation of Third-Party Aggregation in the MISO and SPP Footprints* (LBNL Report), with particular focus on states within the two regional transmission organizations that include Missouri: the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP).² A copy of the LBNL Report is filed in this docket.

The LBNL Report summarizes how other states have evaluated and/or integrated aggregators into wholesale markets. The LBNL Report examines how states have addressed a set of relevant policy issues, including jurisdiction, dispute resolution, registration and licensing, double counting, the roles of and limitations on aggregators, data protection, and implementation challenges. The LBNL Report makes several general findings. The LBNL Report notes that a majority of MISO and SPP states opted out of third-party ARC participation in wholesale markets³ after FERC Order No. 719 and 719-A.⁴ However, third-party ARCs in Kansas and Oklahoma do participate in the SPP without comprehensive state-administered rules.⁵ Michigan, where MISO has a large footprint, recently modified its opt-out to allow aggregations of larger commercial and industrial customers in its jurisdictional territories, and is using its early experience as the

² Sydney P. Forrester, Cole Triedman, Sam Kozel, Cameron Brooks, Peter Cappers, *Regulation of Third-Party Aggregation in the MISO and SPP Footprints* (LBNL Report), April 2023.

³ LBNL Report, pg. 6.

⁴ See Order No. 719, Final Rule, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC 61,071 (October 17, 2008).

⁵ LBNL Report, pg. 7. Specifically, the Report notes that Oklahoma's largest utility, PSO, has adjusted its tariffs to address issues related to customer participation in third-party aggregations, and that Evergy Kansas petitioned for tariff changes regarding third-party aggregations in January 2023. LBNL Report, pg. v fn. 1.

first step in an incremental approach to addressing ARCs.⁶ The LBNL Report describes how other states are moving forward with evaluations of ARCs,⁷ and notes that regulators in other states share the Commission's interest in better understanding issues surrounding aggregations, ARCs, and the role of retail regulators.⁸ Regardless of their state's market footprint or regulatory structure, regulators indicated a desire to learn more about the implementation of Order No. 2222 and to share experiences with regulators in Missouri and other states.⁹

Opportunity for Additional Comments

In light of the ongoing developments regarding ARCs described in the LBNL Report, the Commission will continue to evaluate modification of its 2010 temporary prohibition on ARCs as applied to commercial and industrial customers. To further that evaluation, the Commission invites stakeholders to comment on the details of such a modification. Specifically, the Commission invites comments addressing:

A. **Size Limitations for Demand Response (DR) eligibility:**

Previous comments proposed various size limitations for commercial and industrial (C&I) customers to participate in wholesale DR either directly or through third-party ARCs. Proposals ranged from no size limit, to thresholds of 10kW, 100kW, 300kW, or a modification limited to large customers. In addition, the Michigan Public Service Commission approved 1MW as the threshold for ARC participation in its jurisdiction.

⁶ LBNL Report, pg. v, pg. 2 fn. 4, and pg. 10.

⁷ LBNL Report, pg. 2 fn. 4.

⁸ LBNL Report, pg. 8.

⁹ *Id.*

1. What impact could any of these limits have on implementation of a modified opt-out as applied to C&I customers in terms of reliability, participation or the need for additional regulations?
2. Should the Commission establish different size limits for different utilities based on customer classes?
3. Should these size limits apply to a single location, or should a single customer be permitted to aggregate multiple locations to meet the threshold?
4. How many in terms of numerical value and as a percentage of the C&I customer classes and any specific sub-classes and what types of customers (with and without aggregated load) would be included within the proposed thresholds?
5. Should there be a maximum aggregated size limit?

B. Dispute Resolution:

1. As to utilities with affiliates in states that allow ARCs:
 - a. How are relationships between utilities and ARCs managed?
 - b. What types of disputes arise, and how frequently?
 - c. How are disputes resolved?
2. As to the ARCs:
 - a. How do they manage relationships with utilities?
 - b. What types of disputes arise, and how frequently?
 - c. How are disputes resolved?
3. As to MISO and SPP:
 - a. What types of disputes arise related to third-party demand response, and how frequently?

- b. How are those disputes typically resolved?
- c. What disputes, if any, have been resolved by the state utility commission or other state regulatory authority?

C. Double Counting/Dual Participation:

1. Should the Commission clarify whether a C&I customer can participate only in the wholesale market or only in the retail market? How should this clarification be made?
2. If dual participation in the wholesale and retail markets for different services is allowed, how would improper double counting be identified and avoided?
3. What specific internal processes and procedures would utilities need to implement to address double counting under the requirements and procedures imposed by MISO or SPP?

D. Data Governance:

1. Do existing utility tariffs include provisions related to customer data privacy?
 - a. What revisions related to third-party demand response aggregation, if any, would be necessary?
2. What customer information is generally shared between the utility and the ARC?
 - a. What information, if any, is public information?
3. How do ARCs protect customer information?
4. How do ARCs protect their systems from cybersecurity threats?
5. Would adoption of Green Button or similar alternative facilitate timely and accurate demand response registration?
 - a. Are there any implementation constraints related to adopting Green Button or similar alternative?

E. Regulatory Gaps:

If the Commission modifies its opt-out to permit third-party demand response for C&I customers, what regulatory gaps, if any, exist under MISO and SPP rules governing demand response?

Notice of Workshop

In addition, the Commission will schedule a workshop to be held July 10, 2023. The workshop will take place in Room 450 at the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65101. Interested stakeholders may participate in the workshop either virtually or in person. The Commission will issue an agenda for the workshop in a subsequent order with a starting time and instructions on how to participate virtually.

THE COMMISSION ORDERS THAT:

1. Any interested stakeholder wishing to comment regarding the questions identified in the body of this order shall do so no later than June 22, 2023.
2. A workshop will be held in-person and by WebEx video and telephone conference on July 10, 2023, in Room 450 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65101. Information on the starting time, agenda, and WebEx call-in and login information will be distributed at a later date.
3. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Dippell, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of The Empire	)	
District Gas Company d/b/a Liberty for a Certificate	)	<u>File No. GA-2023-0110</u>
of Convenience and Necessity to Construct, Install,	)	
Own, Operate, Maintain, and Otherwise Control and	)	
Manage a Natural Gas Distribution System in and	)	
Around Platte County, Missouri as an Expansion of	)	
its Existing Certificated Areas	)	

**ORDER APPROVING STIPULATION AND
AGREEMENT AND AMENDING ORDER GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY**

CERTIFICATES

§43. Gas

The Commission amended a previous grant of a certificate of convenience and necessity to incorporate a later-filed stipulation and agreement involving a second natural gas distribution company.

GAS

§3. Certificate of convenience and necessity

The Commission amended a previous grant of a certificate of convenience and necessity to incorporate a later-filed stipulation and agreement involving a second natural gas distribution company.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
June, 2023.

In the Matter of the Application of The Empire	)	
District Gas Company d/b/a Liberty for a Certificate	)	<u>File No. GA-2023-0110</u>
of Convenience and Necessity to Construct, Install,	)	
Own, Operate, Maintain, and Otherwise Control and	)	
Manage a Natural Gas Distribution System in and	)	
Around Platte County, Missouri as an Expansion of	)	
its Existing Certified Areas	)	

**ORDER APPROVING STIPULATION AND
AGREEMENT AND AMENDING ORDER GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: June 1, 2023

Effective Date: June 11, 2023

On September 21, 2022, The Empire District Gas Company d/b/a Liberty (EDG) filed the above-referenced application. EDG seeks a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Platte County, Missouri, as a further expansion of its existing certificated area. On January 25, 2023, the Commission granted EDG's request by order effective February 24, 2023.

On February 24, 2023, Spire Missouri Inc. (Spire Missouri) filed an application for rehearing. Spire Missouri was not a party to the case previously. Spire Missouri states that it is already serving customers in the area in which EDG received its CCN.

On May 10, 2023, EDG, Spire Missouri, and the Staff of the Commission (Staff) filed a Stipulation and Agreement and on May 23, 2023, filed the final appendices (together referred to as the Stipulation). That Stipulation depicts the agreed

apportionment of the CCN area between EDG and Spire Missouri.¹ The Stipulation requests that the Commission amend its order granting the CCN as reflected in the Stipulation. The Stipulation further states that the Commission should deny Spire Missouri's application for rehearing as untimely.

Commission Rule 20 CSR 4240-2.115(2) allows parties seven days to object to non-unanimous stipulations and agreements. More than seven days have elapsed since the Stipulation was filed, and no party has objected. Thus, Commission Rule 20 CSR 4240-2.115(2)(C) allows the Commission to treat the Stipulation as unanimous.

The Commission finds the Stipulation reasonable, and will approve it. The Commission will amend its order granting EDG's a CCN, as permitted by Section 386.490.2 RSMo.

The Commission notes that the Stipulation states that Spire Missouri will apply for a CCN to serve areas apportioned to it in the Stipulation. This order does not affect or prejudice any CCN application Spire Missouri may file.

The Commission further finds the application for rehearing untimely as it was not filed before the order's effective date. So that the parties may expeditiously serve customers as provided in the Stipulation, the Commission finds it reasonable to make this order effective in fewer than 30 days.

THE COMMISSION ORDERS THAT:

1. The Stipulation is approved, and its signatories are ordered to comply with its terms. The Stipulation is attached as Exhibit 1.

¹ On May 24, 2023, EDG filed tariff sheets to implement the Stipulation. The Commission will rule on those tariff sheets in a subsequent order.

2. The Commission's January 25, 2023 Order Granting Certificate of Convenience and Necessity is amended to reflect the service territories EDG and Spire Missouri have agreed upon in the Stipulation.

3. The application for rehearing filed by Spire Missouri is denied as untimely.

4. This order shall become effective on June 11, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water	)	
Company for a Certificate of Convenience	)	
and Necessity Authorizing it to Install, Own,	)	<u>File No. WA-2023-0345</u>
Acquire, Construct, Operate, Control,	)	
Manage and Maintain a Water System and	)	
Sewer System In and Around the City of	)	
Wood Heights, Missouri	)	

ORDER APPROVING TRANSFERS OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

ACCOUNTING

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§45. Water

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

PUBLIC UTILITIES

§13. Acquisition of public utility property

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

RATES**§68. Establishment of rate base**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§4. Transfer, lease and sale**§21. Accounting****§22. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

VALUATION**§6. Jurisdiction and powers of the State Commission****§9. Methods or theories generally****§11. Rule, formula or judgment as a guide****§14. For rate making purposes**

§15. Purchase or sale price**§78. Water****§79. Sewer**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§4. Transfer, lease and sale**§23. Accounting****§24. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
June, 2023.

In the Matter of Missouri-American Water)
Company for a Certificate of Convenience)
and Necessity Authorizing It to Install, Own,)
Acquire, Construct, Operate, Control,)
Manage and Maintain a Water System and)
Sewer System In and Around the City of)
Wood Heights, Missouri)

File No. WA-2023-0345

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: June 7, 2023

Effective Date: July 7, 2023

Procedural History

On April 5, 2023, Missouri-American Water Company (MAWC) filed the above-referenced application.¹ The application seeks, among other things, authority for MAWC to acquire and operate the assets of a municipal water and sewer system in Wood Heights, Missouri. The residents of Wood Heights overwhelmingly approved selling those assets to MAWC in an April 5, 2022, election.

MAWC also asks for a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems. MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as

¹ At MAWC’s request, the Commission consolidated File Nos. WA-2023-0345 and SA-2023-0346.

those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. If the Commission approves MAWC's application, MAWC would provide water service for Wood Heights' 260 water customers, and sewer service for Wood Heights' 190 sewer customers.²

In addition, MAWC requests the Commission permit it to use Section 393.320 2016 RSMo to establish the rate base of the Wood Heights water and sewer systems.³ Finally, MAWC asks the Commission to waive the 60-day notice requirement MAWC would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On May 24, 2023, the Staff of the Commission (Staff) filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions. On May 31, 2023, MAWC stated that it accepted Staff's recommended conditions.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule and no party objected to MAWC's application or Staff's recommendation.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the

² The customer counts are approximate.

³ Statutory references are to the 2016 publication unless otherwise stated.

public service.”⁴ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity that are known as the *Tartan* factors.

The *Tartan* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁵

There is a need for the service, as the residents of Wood Heights currently make use of the existing water and sewer system. MAWC is qualified to provide the service, as it already provides water service to over 480,000 Missouri customers, and sewer service to over 22,000 Missouri customers. MAWC has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given its prior experience and past performance. The proposal promotes the public interest as demonstrated by Wood Heights' citizens voting to proceed with MAWC's Asset Purchase Agreement.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide water and sewer service to the customers currently served by Wood Heights. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial

⁴ Section 393.170.3, RSMo. (Supp. 2022).

⁵ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

capacity to operate the water and sewer system it wishes to purchase from Wood Heights. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Rate base

MAWC seeks to establish the ratemaking rate base associated with the Wood Heights water and sewer assets in this matter pursuant to Section 393.320, RSMo. That statute states, in pertinent part:

The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a “large water public utility” as it is a “public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service.”⁶ Wood Heights is a “small water utility” as it is a “water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.”⁷

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Wood Heights water and sewer system and is attached to MAWC’s application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing,

⁶ Section 393.320.1(1) RSMo.

⁷ Section 393.320.1(2) RSMo.

and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the \$1,000,000 purchase price is less than the value produced under the appraisal method. Thus, Staff recommends a rate base value of \$1,000,000 for the combined assets of Wood Heights’ water and sewer systems. Staff does not object to MAWC’s allocation of \$800,000 for the water system assets and \$200,000 for the sewer system assets.

Waiver of 60-day notice rule

MAWC’s application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). MAWC asserts there is good cause for granting such waiver because it did not engage in conduct that would constitute a violation of the Commission’s ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. MAWC is granted permission to acquire the water and sewer system assets of the City of Wood Heights, Missouri.
2. MAWC is granted a certificate of convenience and necessity to provide water and sewer service in the City of Wood Heights area described in the map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff’s Recommendation, including the filing of tariffs, as set out below:
 - a. The Commission approves existing MAWC water rates applicable to customers outside the St. Louis region for water and sewer rates.

- b. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include adequately identified service area maps, service area written descriptions, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;
- c. MAWC shall notify the Commission of closing on the assets within 5 days after such closing;
- d. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, MAWC shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
- e. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the City service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the City service area in both the water and sewer tariffs;
- f. MAWC shall develop a plan to book all of the City plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions-in-aid-of-construction (CIAC) for appropriate plant accounts, such that current rate base is broken down as \$800,000 for the water system, and \$200,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan must be submitted to Staff for review within 60 days after closing on the assets;
- g. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
- h. MAWC shall adopt the depreciation rates ordered for MAWC in Case No. WR-2020-0344;

- i. MAWC shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the Wood Heights customers regarding its acquisition and operations of the water system assets, and how may customers reach MAWC, within ten days after closing on the assets.
- j. MAWC shall obtain from the City, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions.
- k. Except as required by §393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;
- l. MAWC shall distribute to the City customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;
- m. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;
- n. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Wood Heights water and sewer system customers;
- o. MAWC shall include the Wood Heights water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- p. MAWC shall file notice in this case outlining completion of the above recommended training, customer communications, and notifications within ten (10) days after such communications and notifications are complete.

3. MAWC is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

4. The 60 day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

5. This order shall become effective on July 7, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman and Kolkmeier CC., concur.
Hahn, C., abstains.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Tariffs to Adjust its)
Revenues for Electric Service) **File No. ER-2022-0337**

REPORT AND ORDER

ACCOUNTING

§4. Jurisdiction and powers of the State Commission

§5. Reports, records and statements

§12. Capital account

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

§4. Jurisdiction and powers of the State Commission

§12. Capital account

§19. Fixed assets

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

CERTIFICATES

§11. When a certificate is required generally

§42. Electric and power

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

DEPRECIATION

§3. Reports, records and statements

§6. Jurisdiction and powers of the State Commission

§9. Generally

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and

dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ELECTRIC

§3. Certificate of convenience and necessity

§30. Construction

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

§9. Jurisdiction and powers of the State Commission

§18. Depreciation

§27. Accounting

§40. Reports, records and statements

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

§9. Jurisdiction and powers of the State Commission

§20. Rates

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

§9. Jurisdiction and powers of the State Commission

§20. Rates

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

§9. Jurisdiction and powers of the State Commission

§20. Rates

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

§9. Jurisdiction and powers of the State Commission

§20. Rates

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to

reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

§9. Jurisdiction and powers of the State Commission

§27. Accounting

§40. Reports, records and statements

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

§20. Rates

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

§22. Revenue

§28. Apportionment

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§6. Weight, effect and sufficiency

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

RATES

§3. Jurisdiction and powers of the State Commission

§8. Reasonableness generally

§15. Classification of customers

§45. Uniformity

§118. Method of allocating costs

§119. Rate design, class cost of service for electric utilities

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission

has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

§3. Jurisdiction and powers of the State Commission

§8. Reasonableness generally

§104. Electric and power

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

§3. Jurisdiction and powers of the State Commission

§80. Kinds and forms of rates and charges in general

§100. Variable rates based on costs-generally

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

§3. Jurisdiction and powers of the State Commission

§80. Kinds and forms of rates and charges in general

§100. Variable rates based on costs-generally

§104. Electric and power

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

§8. Reasonableness generally

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

§20. Costs and expenses

§32. Ownership of facilities

§47. Value of cost of the property

§118. Method of allocating costs

§119. Rate design, class cost of service for electric utilities

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

SERVICE**§11. Jurisdiction and powers of the State Commission**

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

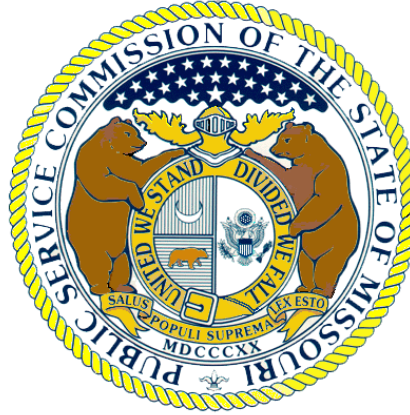
§11. Jurisdiction and powers of the State Commission

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

VALUATION**§6. Jurisdiction and powers of the State Commission****§9. Methods or theories generally****§14. For rate making purposes****§74. Electric and power**

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Tariffs to Adjust its)
Revenues for Electric Service)

File No. ER-2022-0337
Tracking No. YE-2023-0031

REPORT AND ORDER

Issue Date: June 14, 2023

Effective Date: June 24, 2023

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REPORT AND ORDER

This case involves Union Electric Company d/b/a Ameren Missouri's (Ameren Missouri or "the Company") request to increase its annual revenues. Ameren Missouri says an increase is needed because of investments in its infrastructure, increases in its cost of capital since its last rate case, higher depreciation costs, and other changes in the cost of providing service.¹ This Report and Order approves a Stipulation and Agreement (Agreement) between several of the parties resolving most of the issues in this rate case. This Report and Order also resolves the remaining unsettled issues not addressed in the Agreement.

Procedural History

Ameren Missouri filed tariff sheets on August 1, 2022, to increase its electric rate base annual revenues by \$316 million. Ameren Missouri calculates that its request would raise a typical residential customer's bill by approximately 11.64 percent. Filing those tariff sheets initiated a general rate case. So that the Commission would have time to review Ameren Missouri's request, and so the parties would have time to prepare for an evidentiary hearing, the Commission suspended Ameren Missouri's general rate increase tariff sheets until July 1, 2023, the maximum amount of time allowed under the statute.

The Commission granted the intervention requests of Midwest Energy Consumers Group (MECG); Missouri Industrial Energy Consumers (MIEC); Renew Missouri Advocates d/b/a Renew Missouri; Consumers Council of Missouri (Consumers Council); Sierra Club; National Association for the Advancement of Colored People (NAACP); and

¹ Ameren Missouri's last general rate case concluded in February 2022.

Metropolitan Congregations United (Metropolitan Congregations), allowing them to become parties in this rate case. The Staff of the Commission (Staff) and the Office of the Public Counsel (Public Counsel) are parties by statute.

The Commission established the test year for this case as the 12-months ending March 31, 2022, trued-up for known and measurable revenue, rate base, and expense items through December 31, 2022. The test year is a 12-month period used to determine the cost of Ameren Missouri providing service to customers. The Commission also issued a procedural schedule with an evidentiary hearing, for the parties to present evidence to the Commission on disputed case issues.

The Commission held six public comment hearings between January 31² and February 9, for the public to comment on Ameren Missouri's proposed revenue increase. Four of the public comment hearings were conducted in-person and two were conducted by video and teleconference. The Commission also received numerous written comments.

The parties prefiled direct, rebuttal, surrebuttal, and true-up direct testimony.

The Commission held an evidentiary hearing on April 12 through April 13, and an on-the-record presentation about the Agreement on April 14. The parties filed initial post-hearing briefs on May 5, and reply briefs on May 15.

The Agreement

On April 7, the parties filed the Agreement resolving all issues in the case related to Ameren Missouri's revenue requirement. The Agreement also resolves additional issues. The Commission will not address the issues the Agreement resolves, because

² Unless a year is specifically attached, date references are to 2023.

this Report and Order approves the Agreement as a resolution of those issues. Ameren Missouri, Staff, Public Counsel, MIEC, MIEG, and Consumers Council cosigned the Agreement. The Agreement states that the remaining parties, Sierra Club, NAACP, Metropolitan Congregations, and Renew Missouri do not oppose the Agreement.

The revenue requirement is the amount Ameren Missouri is authorized to collect to cover its costs and a return on its investment. The Agreement resolves the revenue requirement allowing Ameren Missouri to increase its revenues by \$140 million. That amount is less than half of the \$316 million Ameren Missouri originally requested. The Agreement is a “black box” settlement. A “black box” settlement means that, while the parties reached an agreement on the issues, the Agreement does not address the details of how those agreements were reached, or how the global numbers were calculated.

The Agreement includes setting Ameren Missouri’s Weighted Average Cost of Capital at 6.82 percent for Plant-in-Service Accounting deferrals, Ameren Missouri’s Allowance for Funds Used During Construction, and the Renewable Energy Standard Rate Adjustment Mechanism. The Agreement sets the base amount for the Renewable Energy Standard Rate Adjustment Mechanism at \$7,205,895. The Agreement sets the base factor for Ameren Missouri’s Fuel Adjustment Clause (FAC) at \$0.01439 per kWh for summer and \$0.01328 per kWh for winter. The Agreement establishes trackers for taxes, retirement benefits, and Renewable Energy Standard compliance. The Agreement also increases the budget for specific Low-Income Programs and provides that half of the contributions for those programs will come from shareholders and half will come from ratepayers.

Commission Rule 20 CSR 4240-2.115(1)(B) provides that the Commission may resolve part of a contested case based upon a stipulation and agreement. The Agreement is not considered unanimous by the Commission's rule 20 CSR 4240-2.115(2), even though no party objected to the Agreement, because all parties did not sign the Agreement. That rule allows parties seven days to object to a non-unanimous stipulation and agreement. That rule also allows the Commission to treat a non-unanimous stipulation and agreement as unanimous if no party timely objects. More than seven days have passed since the signatories filed the Agreement, and no party has objected. So, the Commission will treat the Agreement as unanimous.

After examining the Agreement, the Commission finds that it reasonably resolves the issues it addresses. Though it is a "black box" agreement, the Commission finds that the interests of the signatory parties were represented, and the non-signatory parties did not oppose the Agreement. As such, the Commission finds the interests of the Company, the ratepayers, Staff, and the various intervening entities were adequately represented and the Agreement provides for just and reasonable rates. The Commission will approve the Agreement and will direct the signatories to the Agreement to comply with its terms.³

Pending Motions

Staff filed a motion to strike portions of the testimony of Ameren Missouri witness Nicholas Bowden. At the evidentiary hearing, counsel for Staff stated that its motion to strike was moot if the Commission approved the Agreement.⁴ Staff's motion is moot, so the Commission will not address it.

³ A copy of the agreement is attached to this order.

⁴ Transcript, pages 365-366.

Sierra Club filed a motion for leave to late file its initial brief. The Commission will grant that motion.

General Findings of Fact⁵

The Commission makes the following general findings of fact:

1. Ameren Missouri is an investor-owned electric utility providing retail electric service to a 24,000 square mile area in central and eastern Missouri, including the greater St. Louis area.⁶

2. Ameren Missouri is the largest public utility in Missouri⁷ and provides electric service to more than 1.2 million customers.⁸

3. Ameren Missouri is a member of the Midcontinent Independent System Operator, Inc. (MISO), a regional transmission organization (RTO). The Commission has authorized Ameren Missouri to participate in MISO through May 2024.⁹

4. Section 386.710(2), RSMo, and Commission Rule 20 CSR 4240-2.010(10), designates Public Counsel as a party this case.

5. Commission Rule 20 CSR4240-2.010(10) designates Staff as a party to this case.

General Conclusions of Law

A. Ameren Missouri is a public utility, and an electrical corporation, as defined in Subsections 386.020(15) and (43), RSMo. So, Ameren Missouri is subject to the Commission's jurisdiction under Chapters 386 and 393, RSMo.

⁵ All findings of fact and conclusions of law are cumulative and are not limited to the section where they are introduced.

⁶ Exhibit 166, Won Direct, page 19.

⁷ Exhibit 12, Bulkley Direct, page 33.

⁸ Exhibit 23, Reed Direct, page 3.

⁹ Exhibit 166, Won Direct, page 19.

B. The Commission has subject matter jurisdiction over Ameren Missouri's rate increase request under Section 393.150, RSMo.

C. Section 393.150, RSMo, authorizes the Commission to suspend the effective date of a proposed tariff for 120 days beyond its effective date, plus an additional six months.

D. Ameren Missouri can charge only those amounts set forth in its tariffs.¹⁰

E. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electric service.

F. Utilities are required to provide safe and adequate service.¹¹

G. The Commission must determine whether the proposed rates are just and reasonable when deciding the rates Ameren Missouri may charge its customers.¹²

H. Ameren Missouri has the burden of proving its proposed rates are just and reasonable, under Section 393.150.2, RSMo: "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the ... electrical corporation"

I. Ameren Missouri must meet the preponderance of the evidence standard to satisfy its burden of proof.¹³ Ameren Missouri must convince the Commission it is "more likely than not" that its proposed rate increase is just and reasonable" to meet this standard.¹⁴

¹⁰ Sections 393.130 and 393.140, RSMo.

¹¹ Sections 393.130 and 393.140, RSMo.

¹² Section 393.150.2, RSMo.

¹³ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007).

¹⁴ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999).

J. Witness credibility is a matter for the fact-finder, “which is free to believe none, part, or all of the testimony.”¹⁵

K. As fact-finder, an administrative agency like the Commission receives deference when choosing between conflicting evidence.¹⁶

L. A reviewing court will not substitute its judgment for the Commission’s judgment, where that decision involves an exercise of the Commission’s regulatory discretion, particularly on issues within Commission’s area of expertise.¹⁷

M. MEGC’s proposed shift to increase the demand component for Large General Service and Small Primary Service, and decrease energy charges, allocation of production and distribution costs, and the reasonableness of Rider B calculations were also issues in File No. ER-2021-0240.¹⁸

Issues for Commission Determination

The remainder of this Report and Order decides the issues not settled in the Agreement. The parties presented evidence to the Commission on the unsettled issues at the evidentiary hearing and argued these issues in briefs.

The parties separated unsettled issues into three categories: 1) Class cost of service, revenue allocation, rate design, and Ameren Missouri’s request for a rate switching tracker; 2) Ameren Missouri’s continuing property record; and 3) identification of avoided capital investments for two power plants. Commission decisions on some

¹⁵ *State ex rel. Public Counsel v. Missouri Public Service Com’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

¹⁶ *State ex rel. Missouri Office of Public Counsel v. Public Service Com’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

¹⁷ *State ex rel. Missouri Gas Energy v. Public Service Com’n*, 186 S.W.3d 376, 382 (Mo. App. 2005).

¹⁸ ER-2021-0240, Report and Order (issued February 2, 2022).

issues make deciding other issues unnecessary. The Commission rearranged issues within these categories for clarity.

1. Class Cost of Service, Revenue Allocation, Rate Design and Rate Switching Tracker.

A. Which parties' Class Cost of Service Study should be used in this rate case and used as a starting point for the non-residential rate design working case agreed to by the parties in Ameren Missouri's last electric general rate case, File No. ER-2021-0240?

B. How should any rate increase be allocated to the customer classes?

These issues are related and the Commission will address them together.

Findings of Fact:

6. A Class Cost of Service Study (CCOSS) is a tool used to design equitable rates. The purpose of a CCOSS is to allocate cost responsibility to customer classes based on causation.¹⁹

7. Ameren Missouri organizes customers with similar service voltages, uses, and demands into classes. Ameren Missouri currently serves the following customer classes: Residential or 1(M); Small General Service (SGS) or 2(M); Large General Service (LGS) or 3(M); Small Primary Service (SPS) or 4(M); Company-Owned Street & Outdoor Area Lighting 5(M); Customer-Owned Street & Outdoor Area Lighting 6(M); and Large Primary Service (LPS) or 11(M) classes.²⁰

8. Ameren Missouri and Staff each developed a CCOSS to support their class allocation proposals. MIEC did not prepare their own CCOSSs, but used Ameren Missouri's CCOSS as a starting point and modified it to support their allocation proposals.

¹⁹ Exhibit 35, Hickman Direct, page 5.

²⁰ Exhibit 35, Hickman Direct, page 6.

9. Ameren Missouri prepared a CCROSS for its production plant using the 4 Non-Coincident version of Peak Average and Excess methodology (4NCP A&E).²¹ The Average and Excess method allocates costs based on a weighting of average class demand and class excess demand during the CCROSS period. The Non-Coincident Peak method allocates costs based on the peak demand of each customer class at any time during the study period, without regard to the time of occurrence or magnitude of the coincident system peaks.²² Ameren Missouri's application of the 4NCP A&E considers the four maximum non-coincident peaks months for each customer class that occurred during the test year. Ameren Missouri's study determined that those peaks occurred from June to September.²³

10. Ameren Missouri witness Thomas Hickman credibly testified that Ameren Missouri has used the 4NCP methodology in Missouri rate cases since at least 2016, and he does not believe that Ameren Missouri has used a method other than the 4NCP in the last decade.²⁴

11. Production plant investment is classified for allocation purposes as demand-related or energy-related. Production costs that are fixed do not vary with the amount of kWhs generated and are considered to be demand-related. Production fuel expense is considered a variable cost. The amount of fuel burned or fuel expense is closely related to the amount of energy that customers use. Fuel expense is an energy-related cost. Most production operation and maintenance (O&M) expenses are fixed and

²¹ Exhibit 35, Hickman Direct, page 20.

²² Exhibit 35, Hickman Direct, page 19.

²³ Exhibit 35, Hickman Direct, page 21.

²⁴ Transcript, page 158.

classified as demand-related. Variable production O&M expenses are classified as energy-related. Demand-related and energy-related types of operating costs are not impacted by the number of customers served.²⁵

12. Energy-related costs are those costs related directly to the customer's consumption of electrical energy (kWh), and consist primarily of fuel, fuel handling, interchange power costs, and a portion of production plant maintenance expenses. Demand-related costs are rate base investment and related operating expenses associated with the facilities necessary to supply a customer's service requirements during periods of maximum or peak levels of power consumption each month. The major portion of demand-related costs consists of generation and transmission plant and the non-customer-related portion of distribution plant.²⁶

13. The 4NCP method does not include any considerations for renewable generation plant characteristics that are different from baseload generation. The 4NCP method also does not include any consideration for use of advanced metering infrastructure (AMI) data that can differentiate between class energy consumption during hours of the day.²⁷

14. The electric distribution system is classified as both demand-related and customer-related. A portion of the cost of the distribution system consisting of poles, wires and transformers is required simply to construct a system's electrical pathways that comply with local or national safety and reliability codes, and to attach customers to that system, regardless of their demand or energy requirements. This portion of the electric

²⁵ Exhibit 350, Brubaker Direct, pages 10-11.

²⁶ Exhibit 35, Hickman Direct, page 9.

²⁷ Transcript, page 158.

distribution system may be considered a customer-related cost since it depends primarily on the number of customers, rather than demand or energy usage. Electric distribution system components that are sized to accommodate additional load beyond the capacity of the system, required by local or national safety and reliability codes, are considered demand-related cost.²⁸

15. The customer-related cost components of the distribution system are those costs necessary to simply provide reliable and safe service to a customer, without the consideration of the amount of the customer's electrical use.²⁹

16. Ameren Missouri used a minimum size study to classify distribution costs between demand and customer components.³⁰ A minimum-size distribution study uses the minimum size pole, conductor, cable, and transformer that is currently installed or used by Ameren Missouri to serve its customers and classifies those costs as demand-related. The average book cost for the minimum standard item of equipment normally determines the customer-related cost of all installed units.³¹

17. The National Association of Regulatory Utility Commissioners' (NARUC) cost allocation manual from 1992 describes over 18 different production cost allocation methods, many of which have multiple variations.³²

18. The 1992 NARUC manual, when addressing embedded cost of service studies like Ameren Missouri's minimum distribution study, states that classifying distribution plant using the minimum-size method "assumes that a minimum size

²⁸ Exhibit 350, Brubaker Direct, pages 11-12.

²⁹ Exhibit 35, Hickman Direct, page 9.

³⁰ Exhibit 38, Brown Surrebuttal, page 12.

³¹ Exhibit 35, Hickman Direct, page 10.

³² Exhibit 136, Lange Direct, page 19.

distribution can be built to serve the minimum loading requirements of the customer.”³³ Ameren Missouri has approximately 648 primary voltage customers.³⁴ Ameren Missouri’s minimum distribution study for plant accounts 364-368 uses components that operate at primary voltages,³⁵ but most of Ameren Missouri’s customers take service at secondary voltage.³⁶ So, Ameren Missouri’s minimum size study is oversized for a majority of Ameren Missouri’s customers.³⁷

19. Customers served at higher voltages, including 25 kV, have generally not had to pay costs for lower-voltage infrastructure under the theory that customers served at higher voltages do not use that infrastructure. Likewise, a customer served at 13.2 kV has not had to pay for secondary-voltage infrastructure on the premise that they are not using that infrastructure.³⁸

20. Staff argues that the Average and Excess allocator is less reasonable for allocation of the revenue requirement associated with Ameren Missouri’s production plant included in rate base since MISO’s integrated marketplace was introduced.³⁹ This is largely because Ameren Missouri’s fuel costs vary with the demand for energy in a given hour of the regional load, and do not vary with the Ameren Missouri load relied on in Ameren Missouri’s Average and Excess allocator analysis.⁴⁰

³³ Exhibit 137, page 34.

³⁴ Exhibit 35, Hickman Direct, page 6.

³⁵ Exhibit 137, Lange Rebuttal, page 37.

³⁶ Exhibit 137, Lange Rebuttal, page 36.

³⁷ Exhibit 137, Lange Rebuttal, page 47.

³⁸ Exhibit 136, Lange Direct, page 12.

³⁹ Exhibit 137, Lange Rebuttal, page 25.

⁴⁰ Exhibit 137, Lange Rebuttal, page 26.

21. In November of 2021, MISO submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff to establish seasonal resource adequacy requirements.⁴¹

22. Staff prepared a CCOS in an effort to move toward rate modernization. Staff used different allocation methods for different generation resources. Staff's generation allocation study categorized generation assets as those with significant variable operation costs that can be avoided if the generation resource is offline (Type 1) and generation assets with no or minimal variable operation costs that are limited by weather or other factors beyond Ameren Missouri's control (Type 2).⁴² Staff allocated Type 1 assets on the basis of demand, utilizing an "All Peak Hours Approach" (described in the 1992 NARUC manual) based on each class's contribution to identified MISO Resource Adequacy hours. That is then offset by a class's allocation of Type 2 assets.⁴³

23. Staff's CCOS approach differs from other parties' CCOSs in that it attempts to allocate specific utility infrastructure to the customers who /predominantly use that infrastructure.⁴⁴

24. Staff sees its approach in this case as an interim step toward rate modernization. Staff believes an interim step is necessary because Staff has struggled to gather sufficient information from Ameren Missouri for rate modernization. Staff does not

⁴¹ Exhibit 136, Lange Direct, page 17.

⁴² Exhibit 136, Lange Direct, pages 20-21.

⁴³ Exhibit 36, Hickman Rebuttal, page 15, and Exhibit 136, Lange Direct, pages 21.

⁴⁴ Transcript, page 409.

know the totality of what information exists and believes a workshop (working docket) where information is exchanged would be productive.⁴⁵

25. As an alternative to Staff's CCROSS allocation, Staff supports as reasonable an equal percentage increase to all classes other than Company-owned lighting.⁴⁶ Staff Witness, Sarah Lange, indicated that Staff would not oppose postponing rate modernization to the Company's next rate case, if the Commission ordered Ameren Missouri to retain and provide the minimum information Staff believes is necessary for rate modernization.⁴⁷

26. Public Counsel also supports an equal increase for all classes with the exception of Company owned lighting.⁴⁸

27. MIEC's witness Steve Chriss supports using the 4NCP A&E allocation method as a reasonable allocation method.⁴⁹ Chriss suggests that Ameren Missouri's CCROSS does not comply with the requirements of Section 393.1620.1(1) RSMo because the 4NCP in the 4NCP A&E should be determined using the four months with the highest system peak loads. Chriss testifies that Ameren Missouri's 4NCP used different months depending on class. Chriss's modification of Ameren Missouri's CCROSS uses the four highest system peak load months.⁵⁰

28. MIEC's witness Maurice Brubaker used Ameren Missouri's CCROSS as a starting point and modified a few allocations.⁵¹ MIEC's CCROSS was not based on a

⁴⁵ Transcript, page 409-412. Staff's use of workshop here does not refer to the non-residential rate design docket, but a workshop including all rate structures and classes.

⁴⁶ Exhibit 137, Lange Rebuttal, page 53, Footnote 9.

⁴⁷ Transcript, pages 418-419.

⁴⁸ Transcript, page 343.

⁴⁹ Exhibit 400, Chriss Direct, pages 3-4.

⁵⁰ Exhibit 400, Chriss Direct, page 18.

⁵¹ Exhibit 36, Hickman Rebuttal, page 3.

particular revenue requirement, but was revenue neutral.⁵² Brubaker disagrees with Ameren Missouri's treatment of non-labor component of production non-fuel O&M. Ameren Missouri allocates a larger proportion of non-fuel production O&M expense to energy than Brubaker. Because these expenses are more a function of the existence of generation facilities and the passage of time, he allocated them as a demand-related cost. Another change from Ameren Missouri's CCROSS is that Brubaker calculated taxes at the current rate based upon the taxable income of each class. He states that this alteration reduces the costs charged to the Residential class and increases the rate of return from the Residential class.⁵³

29. CCROSSs serve as a guide for setting class revenue requirements, but should not be strictly relied upon for establishing each individual class's revenue requirements. CCROSSs are not precise, and are not updated for changes from the studied revenue requirement (\$316 million) and billing determinants.⁵⁴ CCROSSs do not account for the settled revenue requirement (\$140 million) and ordered billing determinants.

30. Staff testified that a utility's physical characteristics and accessible data fluctuate, and accordingly, the Commission hardly ever approves a particular allocation method because the appropriate method can vary from rate case to rate case.⁵⁵ If the revenue requirement is evenly distributed across the rate classes a CCROSS is not necessary.⁵⁶

⁵² Transcript, page 369.

⁵³ Exhibit 350, Brubaker Direct, page 3.

⁵⁴ Exhibit 136, Lange Direct, page 27.

⁵⁵ Exhibit 136, Lange Direct, page 20.

⁵⁶ Transcript, page 373.

30. Outside of a CCROSS, other considerations exist to guide setting class revenue requirements. Policy considerations like rate continuity, rate stability, revenue stability, and minimizing rate shock are useful for setting class revenue responsibilities.⁵⁷

31. The Company-owned lighting class is paying rates above its rate of return on base rate cost of service. The Customer owned lighting class is paying rates below its class cost of service. To avoid potential rate shock, Ameren Missouri is not proposing to adjust each lighting class to an equal return. Instead, Ameren Missouri proposes small adjustments over time to gradually align the two classes with their respective costs of service. This smaller revenue neutral shift toward cost of service for both lighting classes is what the Commission ordered in Ameren Missouri's last rate case.⁵⁸ The Company proposes a small incremental of \$60,000⁵⁹ revenue neutral shift for the lighting classes. Customer owned lighting would be increased by \$60,000 and Company owned lighting would decrease \$60,000.

32. As an alternative to a \$60,000 revenue neutral shift, Staff proposes that, based upon the results of Ameren Missouri's CCROSS, it would be reasonable to hold the Company's lighting class revenue requirement constant, and to apply an equal percent increase to the revenue requirements of all other classes including customer owned lighting.⁶⁰

33. The two complete CCROSSs prepared in this case are very different. Ameren Missouri's CCROSS shows the Residential and SGS customers pay below target rates of

⁵⁷ Exhibit 136, Lange Direct, page 27.

⁵⁸ Exhibit 32, Harding Direct, page 7-8.

⁵⁹ Exhibit 32, Harding Direct, Schedule MWH-D2.

⁶⁰ Exhibit 137, Lange Rebuttal, page 53.

return, while LPS customers pay above target rates of return. Staff's CCOSS, conversely, shows Residential and SGS customers pay close to target rates of return and LGS, SPS, and LPS customers pay below target rates of return. Both of these cannot be correct.⁶¹

34. Ameren Missouri's witness Steven Wills, MIEC's witness Maurice Brubaker, and MIECG's witness Steve Chriss recommend postponing Staff's proposed changes to non-residential rate plans to a separate proceeding.⁶²

35. Ameren Missouri says that without guidance from the Commission about which CCOSS should be used, any collaborative process concerning future rate design (such as the non-residential working docket) between the parties may become strained.⁶³

36. Ameren Missouri has implemented Plant-In-Service-Accounting (PISA). A cost recovery mechanism to recover costs associated with the Company's capital expenditures between rate cases.⁶⁴

Conclusions of Law:

N. Section 393.1620.2 RSMo states that the Commission must only consider CCOSS results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the NARUC 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

O. Section 393.130.3 RSMo, states;

No ... electrical corporation ... shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular

⁶¹ Exhibit 36, Hickman Rebuttal, page 2.

⁶² Exhibit 41, Wills Surrebuttal, page 23.

⁶³ Exhibit 41, Wills Surrebuttal, pages 24-25.

⁶⁴ Exhibit 12, Bulkley Direct, page 59.

description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In interpreting that statute more than 90 years ago, the Missouri Supreme Court said: “[R]ates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential.”⁶⁵

P. The Commission has much discretion in determining the theory or method it uses in determining rates⁶⁶ and can make pragmatic adjustments called for by particular circumstances.⁶⁷

Q. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”⁶⁸

R. For an electrical corporation that has elected PISA under Section 393.1400, RSMo, (as has Ameren Missouri) Section 393.1655.6, RSMo, provides that:

If the difference between (a) the electrical corporation’s class average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation’s class average overall rate as of the date rates are set in the electrical corporation’s most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400, reflects a compound annual growth rate of more than two percent for the large power service rate class, the class average overall rate shall increase by an amount so that the increase shall equal a compound annual growth rate of

⁶⁵ *State ex rel. Laundry, Inc. v. Public Service Com’n* 34 S.W.2d 37, 44, 327 Mo. 93, 109 (Mo. 1931)

⁶⁶ *State ex rel. Public Counsel v. Public Service Com’n*, 274 S.W.3d 569, 586 (Mo. App. 2009).

⁶⁷ *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com’n* 795 S.W.2d 593, 597 (Mo. App. 1990)

⁶⁸ *Spire Missouri, Inc. v. Missouri Public Service Com’n* 607 S.W.3d 759, 771 (Mo. App. 2020), quoting *National Ass’n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

two percent over such period for such large power service class, **with the reduced revenues arising from limiting the large power service class average overall rate increase to two percent to be allocated to all the electrical corporation's other customer classes through the application of a uniform percentage adjustment to the revenue requirement responsibility of all the other customer classes.** (Emphasis added)

This statute does not have any direct impact on this rate case because the cap it imposes has not yet been met. But it does mean that in a future rate case the Residential rate class, as well as Ameren Missouri's other rate classes, could be statutorily required to subsidize the Large Power Service class. It also means that the legislature has recognized that class cost of service decisions can be based on consideration of public policy interests rather than a strict mathematical calculation.

Decision:

The Commission finds none of the parties' CCOSs suitable for setting rates that are just and reasonable in this rate case. The Commission finds Staff's concerns about Ameren Missouri's CCOS credible. The Commission finds Staff's CCOS insufficient for allocating class revenue responsibilities because Staff was unable to obtain the necessary information to complete more than an interim step toward its goal of rate modernization. MEG and MEIC's modifications to Ameren Missouri's CCOS do not address the underlying problems with the CCOS they modify. Accordingly, with the exception of the Company owned lighting class, to which no increase is applied, no rate class allocation adjustments are necessary. The Commission finds that the revenue increase settled in the Agreement should be allocated to all customer classes on an equal percentage basis.

This issue also asked which party's CCROSS to use as a starting point for the non-residential rate design working case agreed to by the parties in Ameren Missouri's last rate case, File No. ER-2021-0240. The Commission will not select a CCROSS to be a starting point to the non-residential working docket. The Commission does not find it appropriate to endorse a particular CCROSS methodology. The non-residential working docket should not be constrained to a particular rate design methodology. Instead, as addressed elsewhere in this order, that collaborative process is largely dependent on Ameren Missouri providing sufficient data and information to Staff and participants so an exploration of non-residential rate design is productive.

The Commission finds it reasonable to hold Company owned lighting rates constant and apply the revenue requirement as an equal percentage to all other classes.

Though the Commission did not find any party's CCROSS suitable for allocating Ameren Missouri's revenue requirement in this case, the Commission continues to believe that cost-based rates are appropriate. It also believes that this decision will result in rates that are not unduly prejudicial to members of any of Ameren Missouri's rate classes.

C. How should production costs be allocated among customer classes within a CCROSS?

D. How should distribution costs be allocated among customer classes within a CCOSs?

These issues are related and the Commission will address them together.

Findings of Fact:

There are no additional findings of fact for these issues.

Conclusions of Law:

S. The Commission is not authorized to issue advisory opinions.⁶⁹

Decision:

The allocation of production and distribution costs among customer classes are major components of the CCOSS. The Commission is not making a determination concerning the appropriate CCOSS. Any determination by the Commission on how to allocate production and distribution costs would have no practical effect and would essentially be an advisory opinion that the Commission is not authorized to issue. The Commission is allocating Ameren Missouri's revenue requirement on an equal percentage basis, so it does not need to decide these sub-issues.

E. What customer charges should apply to residential rate plans?

- a. If the customer charges for the Ultimate Saver and Smart Saver Plans are discounted relative to other residential rate plans, should a minimum demand charge be imposed with customers to be fully educated on the minimum demand charge?**

Findings of Fact:

37. The customer charge covers customer related costs. The customer charge includes the costs of meters and service lines that connect to a customer's premises, billing costs, and a share of the fixed costs of the distribution grid.⁷⁰

38. Customer charges are fixed and cannot be avoided by customers. They are incurred regardless of a customers demand or energy requirements.⁷¹

⁶⁹ *State ex rel. Laclede Gas Co. v. Public Service Com'n*, 392 S.W.3d 24, 38 (Mo. App. 2012).

⁷⁰ Exhibit 39, Wills Direct, page 22.

⁷¹ Exhibit 39, Wills Direct, pages 24-25.

39. Currently, all Ameren Missouri residential rate plans have \$9.00 per month fixed monthly customer charge.⁷²

40. Ameren Missouri's analysis of customer-related costs from its CCROSS suggests that \$25.94 a month residential customer charge accurately reflects customer related costs.⁷³

41. Ameren Missouri introduced time of use (TOU) rates in its 2019 general rate case.⁷⁴ Ameren Missouri currently offers five residential rate plans including TOU rate plans. Ameren Missouri's TOU plans include the Anytime plan, the Evening/Morning Saver plan, the Overnight Saver plan, the Smart Saver plan, and the Ultimate Saver plan.⁷⁵

42. Ameren Missouri proposes establishing different customer charges for its different residential rate plans.⁷⁶

43. Each of Ameren Missouri's residential rate plan has a different applicable time of use periods. Ameren Missouri's rate plans, time of use periods, peak/off-peak price differentials, and proposed customer charge are accurately represented in the following chart:⁷⁷

Rate Plan	TOU Periods	Peak/Off-Peak Price Differential	Proposed Customer Charge
Anytime	None	None	\$13.00
Evening/Morning Saver	Peak: 9 a.m. to 9 p.m. daily Off-Peak: 9 p.m. to 9 a.m. daily	Small	\$13.00
Overnight Saver	Peak: 6 a.m. to 10 p.m. daily Off-Peak: 10 p.m. to 6 a.m. daily	Moderate	\$13.00

⁷² Exhibit 39, Wills Direct, page 24.

⁷³ Exhibit 39, Wills Direct, page 24.

⁷⁴ Exhibit 1, Wood Direct, page 5.

⁷⁵ Exhibit 39, Wills Direct, page 27.

⁷⁶ Exhibit 39, Wills Direct, page 27.

⁷⁷ Exhibit 39, Wills Direct, pages 4 and 27.

Rate Plan	TOU Periods	Peak/Off-Peak Price Differential	Proposed Customer Charge
Smart Saver	Summer Peak: 3 - 7 p.m. weekdays Non-summer Peak: 6 - 8 a.m. and p.m. weekdays Off-Peak: 10 p.m. to 6 a.m. daily Intermediate: All other hours	Large	\$11.00
Ultimate Saver	Summer Peak: 3 - 7 p.m. weekdays Non-summer Peak: 6 - 8 a.m. and p.m. weekdays Off-Peak: All other hours	Large	\$9.00

44. Rate differential refers to the difference between the per kWh charge during different defined time periods, such as on-peak and off-peak periods. For example, the current Smart Saver rate has a peak summer rate of approximately 33½ cents/kWh, and an off-peak rate of almost 6½ cents/kWh, for a peak to off-peak price ratio of approximately 5:1. This large price differential creates more savings when customers shift usage to the off-peak period, but could increase costs for a customer that has significant usage during the 33½ cents/kWh on-peak periods that they are unable or unwilling to shift.⁷⁸

45. For the Ultimate Saver, in addition to the customer charge for this residential rate plan, Ameren Missouri proposes a demand charge.⁷⁹

46. In support of its rate plans, Ameren Missouri contends that for the different customer charges some of the rate plans, specifically the Ultimate Saver and the Smart Saver are the most cost-reflective rate design. According to Ameren Missouri, The other three plans, Anytime, Evening/Morning Saver and Overnight Saver, are not as sophisticated and are more prone to outcomes where some customers may not contribute equitably to the minimum distribution system fixed costs. Ameren Missouri's witness Wills

⁷⁸ Exhibit 39, Wills Direct, page 5, Footnote 3.

⁷⁹ Exhibit 39, Wills Direct, page 4

further states that the Company's new proposed rate structures, including the customer charge, are intended to send price signals to encourage customers to adopt technologies like battery storage, electric vehicle (EV) charging, smart thermostats and other home automation, and intermittent resources like solar.⁸⁰

47. Ameren Missouri's proposed \$13.00 customer charge for three of its rate plans results in a 44.44 percent increase over the current \$9.00 customer charge.⁸¹ Ameren Missouri is proposing lower customer charges on the TOU rate plans that have more risk or a higher peak to off-peak differential.⁸²

48. Staff conducted an analysis based upon the annual average bills of 99 random customers. Staff's analysis of the Ultimate Saver plan showed that out of those 99 customers, 16 customers experienced a decrease, with an average value of six percent, but 83 customers experienced an increase, with an average size of 11 percent. The largest increase was 41 percent, and the largest decrease was 23 percent. As part of Staff's analysis, they reviewed the impact of the demand charge on these customers. The analysis shows that the customer with the lowest annual demand charge calculation would be billed \$99.01 in demand charges, for an average of \$4.52 per month. The average demand charge calculated was \$33.00 per month, averaging \$21.98 for non-summer months and \$55.06 for summer months. Staff concludes that the inclusion of the demand charge with the Ultimate Saver plan is incredibly risky for ratepayers under the rate design proposed by Ameren Missouri in this case.⁸³

⁸⁰ Exhibit 39, Wills Direct, pages 27-28

⁸¹ Exhibit 201, Marke Surrebuttal, page 30.

⁸² Exhibit 201, Marke Surrebuttal, page 30.

⁸³ Exhibit 138, Lange Surrebuttal, pages 5-6.

49. Ameren Missouri's witness Steven Wills acknowledged that there are natural "winners" and "losers" on TOU rates without any customer behavioral changes.⁸⁴ Staff expressed concern that the lower customer charge will promote the riskiest TOU plans to customers least equipped to handle high bills.⁸⁵

50. Increasing the customer charge positively impacts above-average use customers and negatively impacts below-average use customers. Conversely, a lower customer charge favors below-average use customers. Below-average use customers would include low-income customers, renters, and customers who have invested in energy efficiency or solar.⁸⁶

51. Staff also studied the costs classifiable to the customer charge and its results indicated that the high end of the reasonable range for the residential customer charge is under \$8.00 per month. Staff does not recommend reducing the customer charge and as a result recommended retaining the customer charge for all residential rate schedules at the current level of \$9.00 per month.⁸⁷

52. Public Counsel recommends maintaining the customer charge at \$9.00 per month customer charge for all residential rate plans.⁸⁸

53. Renew Missouri's witness disagrees with Ameren Missouri's position that different customer charges for the residential rate plans will encourage adoption of distributed generation (DG) technologies. To the contrary, James Owen believes that it will discourage adoption of DG technologies.⁸⁹

⁸⁴ Exhibit 39, Wills Direct, page 14.

⁸⁵ Transcript, pages 432-433.

⁸⁶ Exhibit 201, page 29 and Exhibit 450, Owen Rebuttal, page 15

⁸⁷ Exhibit 136, Lange Direct, pages 31-32

⁸⁸ Exhibit 201, Marke Surrebuttal, page 35

⁸⁹ Exhibit 450, Owen Rebuttal, page 15

54. Consumer Council of Missouri's witness recommends the customer charge remain at its current level of \$9.00 per month. To promote affordability, rates should be based more on energy usage than on fixed amounts. Consumers Council would prefer that the rate design for residential customers include a fixed charge that is based on the cost of the meter, customer service, and the line to the dwelling.⁹⁰

Conclusions of Law:

T. Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

Decision:

The Commission finds it appropriate to maintain the current \$9.00 customer charge for all residential rate plans. Customers cannot avoid paying the customer charge because it is a fixed charge, and it is not dependent on energy usage or demand. Higher customer charges negatively affect a customer's ability to lower their utility bill through conservation and energy efficiency measures. This directly conflicts with one of the purposes of TOU rate options. TOU rate options provide customers with rate choice options and a means to save money on their utility bills and cut peak demand at the same time.

Ameren Missouri proposes instituting different customer charges for different TOU rate plans. Ameren Missouri theorizes that differentiated customer charges will send price signals to encourage customers to adopt energy efficient technologies. However, TOU rates provide price signals even without a differentiated customer charge through peak

⁹⁰ Exhibit 300, Hutchinson Direct, page 13

and off-peak pricing. An unavoidable fixed charge does little to inform customers to change usage patterns. Ameren Missouri's proposed lower customer charge for the Ultimate Saver plan makes it an attractive plan for customers wanting to maximize bill savings. However, the Ultimate Saver plan is a risky plan for customers who may not fully understand the risks of the TOU rate with its demand charge. Many Ultimate Saver customers will pay more than they would on the Smart Saver or Anytime plans. As Ameren Missouri acknowledged, TOU rates can be inherently confusing for customers, therefore differentiating the customer charge for different TOU rate plans merely adds to this confusion. The Commission finds it appropriate to maintain the current \$9.00 customer charge for all of its Residential rate plans.

F. What changes should be made, if any, to the Residential rate plans offered by the Company?

- a. Should Staff's proposal to eliminate the Anytime (flat) rate option for any Residential customers who have an AMI meter be approved?**
- b. What changes, if any, should be made to the deployment of residential TOU rate plans?**
- c. Should the Commission order Ameren Missouri to provide a study about offering TOU rates to customers with distributed generation?**

These sub issues are related and the Commission will address them together.

Findings of Fact:

55. TOU residential rate plans are available for all customers with AMI meters.⁹¹

Approximately two thirds of Ameren Missouri customers have AMI meters.⁹²

⁹¹ Exhibit 39, Wills Direct, page 5

⁹² Transcript, pages 245 and 355.

56. Customers who do not affirmatively elect a rate plan six months after receiving their AMI meter, are transitioned to the Evening/Morning Saver rate plan, the current default TOU rate plan.⁹³

57. As of July 20, 2022, 359,115 customers are on the Evening/Morning Saver plan, 522 customers are on the Overnight Saver plan, 366 customers on the Smart Saver plan and 302 customers on the Ultimate Saver plan. As of that date, 519,333 customers with AMI meters, have opted for, or switched from a residential TOU rate plans, to the Anytime plan.⁹⁴

58. Customers on the Overnight Saver, Smart Saver and Ultimate Saver residential rate plans are allowed the option to participate in TOU pricing during the summer only.⁹⁵

59. The Smart Saver and Ultimate Saver rate plans provide the greatest rate differential between peak and non-peak rates.⁹⁶

60. Ameren Missouri presented results that indicate for Overnight Saver, Smart Saver and Ultimate Saver TOU rate plans, around 80 percent of the customer outcomes and individual bills are lower than they would be for the same customers on the Anytime rate plan.⁹⁷

61. The Anytime rate plan and Evening/Morning Saver rate plan produce very similar bills for customers.⁹⁸

⁹³ Exhibit 39, Wills Direct, pages 5-6

⁹⁴ Exhibit 39, Wills Direct, page 7

⁹⁵ Exhibit 39, Wills Direct, page 4

⁹⁶ Exhibit 39, Wills Direct, page 4

⁹⁷ Exhibit 39, Wills Direct, page 8

⁹⁸ Exhibit 39, Wills Direct, page 8, Footnote 6

62. Ameren Missouri testified that TOU rates can be a valuable system planning tool to help reduce peak demand and capacity needs, as well as to help integrate increasing levels of intermittent renewable generation.⁹⁹

63. Staff recommends the Evening/Morning Saver rate schedule be modified to eliminate the six-month lead-in period for changes to TOU rates so that customers can receive service under the Evening/Morning Saver plan from the first billing month after AMI meters are installed.¹⁰⁰

64. Staff also recommends eliminating the Anytime rate schedule for customers with an AMI meter.¹⁰¹

65. Public Counsel agrees with Staff that the Evening/Morning Saver plan should be the default plan for customers with an AMI meter, but opposes eliminating the 6-month phase-in.¹⁰²

66. Ameren Missouri provides reasons why Staff's recommendation to eliminate the 6-month transition period for the Evening/Morning Saver plan is problematic:

- 1) Allows time for Ameren Missouri to collect interval data from the AMI meter to provide customers with an accurate rate comparison information to empower their decision.
- 2) Customers receive specific communication on the rate options, along with personalized rate comparison data.¹⁰³

⁹⁹ Exhibit 39, Wills Direct, pages 9-10

¹⁰⁰ Exhibit 136, Lange Direct, page 34.

¹⁰¹ Exhibit 136, page 32.

¹⁰² Exhibit 201, Marke Surrebuttal, page 28

¹⁰³ Exhibit 40, Wills Rebuttal, pages 7 and 8

67. Ameren Missouri argues that the elimination of the Anytime rate would eliminate a popular rate and reduce customer choice.¹⁰⁴

68. Renew Missouri asks the Commission to direct Ameren Missouri to provide a study about offering TOU rates to customers with distributed generation.¹⁰⁵

69. Ameren Missouri allows customers with their own generation or with service under its net-metering tariff to participate in the Evening/Morning Saver rate plan. Ameren Missouri does not allow net-metering customers to participate in the Overnight Saver, Smart Saver, or Ultimate Saver rate plans.¹⁰⁶ Renew Missouri witness, James Owen, offers policy considerations for offering TOU rate options to distributed generation customers. Offering distributed generation customers the same rate options as other customers encourages the installation of distributed generation technologies, including rooftop solar and battery storage, and promotes electric vehicle adoption.¹⁰⁷

70. Ameren Missouri expressed interest in making more TOU rates available to net metering customers, but does not believe that is as drafted under Section 386.890.3 RSMo, the Net Metering and Easy Connect Act, does not contemplate the application of TOU rates, and when applied as written, does not allow the billing of TOU rates in an economically-rational manner.¹⁰⁸

¹⁰⁴ Exhibit 40, Wills Rebuttal, page 4

¹⁰⁵ Exhibit 450, Owen Rebuttal, page 4.

¹⁰⁶ Exhibit 450, Owen Rebuttal, page 5.

¹⁰⁷ Exhibit 450, Owen Rebuttal, page 6.

¹⁰⁸ Exhibit 41, Wills Surrebuttal, page 21, and Section 386.890.3 RSMo.

71. For the Evening/Morning Saver rate plan, Ameren Missouri proposes to allow customers the option to request all other eligible rate options subject to the terms of use and provisions of those rates and can return to this rate at any time.¹⁰⁹

72. For the Anytime rate plan, customers would be able to switch to this rate plan at any time as an optional rate at the customer's election.¹¹⁰

73. The rate plan selected by the customer shall be applied to the customer's account for a period of not less than one year, unless customer elects to transfer to a different rate during the first ninety (90) days of service.¹¹¹

74. Ameren Missouri has an existing process for providing rate education and a detailed bill comparison for each rate plan to customers after receiving the AMI meter.¹¹²

75. Making changes to the TOU rate structures would be disruptive to the education process and could potentially cause confusion or frustration with the TOU experience.¹¹³

Conclusions of Law:

U. There are no additional conclusions of law for these issues.

Decision:

The Commission finds it necessary to make several changes to the residential TOU rate plans Ameren Missouri offers. When determining just and reasonable rates for ratepayers and the Company, the Commission considers both Ameren Missouri's TOU

¹⁰⁹ Exhibit 32, Harding Direct, Schedule MWH-D1, Sheet No. 54.4.

¹¹⁰ Exhibit 32, Harding Direct, Schedule MWH-D1, Sheet No. 54.

¹¹¹ Exhibit 32, Harding Direct, Schedule MWH-D1, Sheet No. 134.

¹¹² Exhibit 32, Harding Direct, Schedule MWH-D1, Sheet No. 134.

¹¹³ Exhibit 39, Wills Direct, page 6.

rates and TOU rates throughout Missouri. TOU rates, as previously discussed, send price signals to customers by having different rates for peak and off-peak usage. Those price signals should relay a consistent message that the price of energy varies throughout the day.

Ameren Missouri's current default TOU rate plan for customers with an AMI meter is the Evening/Morning Saver plan. The Evening/Morning Saver plan has a small price differential between peak and off-peak pricing and produces similar bill outcomes to the Anytime plan, which is a non-TOU residential plan. The Smart Saver plan has a greater potential to reduce peak load than the Evening/Morning Saver plan and 81 percent of the smart saver customers saved on their bills when compared to the Anytime plan. The Commission finds the Smart Saver plan more appropriate as the default residential TOU plan for Ameren Missouri's customers with an AMI meter. The Smart Saver plan most closely aligns with other electric TOU default plans in Missouri. The Smart Saver plan has two options, a year-round option, and a summer-only option. The Commission finds that the Smart Saver year-round option is the appropriate default option.

Two thirds of Ameren Missouri's customers have AMI meters. Those customers have already defaulted into the Evening/Morning Saver plan, or have selected another TOU rate plan, or the Anytime plan. The Commission wishes to honor the choices of customers already in a TOU plan. The default Smart Saver plan only applies moving forward to customers who do not yet have an AMI meter or customers establishing a new account.

In order for Ameren Missouri to have sufficient time to institute an effective education program to inform customers about TOU rate impacts, to permit Ameren

Missouri time to engage with customers about the new default rate, and so customers have time to adjust their usage patterns before next summer, the Commission finds that the Smart Saver default rate must take effect no later than March 31, 2024. Ameren Missouri must take extra steps to educate space heating customers about the new default plan because those customers could experience greater impacts from the Smart Saver plan.

Staff has asked to eliminate the Anytime plan as an option for customers with an AMI meter. The Commission does not find it appropriate to eliminate the Anytime plan, as it would eliminate a choice available to customers. The Commission encourages customers to take control of their electric utility bills by adopting one of Ameren Missouri's TOU plans. However, certain customers may want to maintain the same rate for all hours of the day, without having to determine whether they are using electricity during a peak usage time. Therefore, the Commission will maintain the Anytime rate as an option for those customers.

Not every customer will reduce their bill and save money on a particular TOU rate plan. Inevitably, as customers endeavor to find the TOU plan that best suits their electric usage, customers may want to switch plans. The Commission does not want to discourage customers from finding the best plan for them, but the Commission does not want to overload Ameren Missouri with customers who may want to change plans frequently. Therefore, the Commission finds that customers must be allowed to change plans up to three times a year. Customers may not change between optional TOU plans more than once in a billing cycle. However, customers may switch to the default Smart Saver plan and the Anytime plan without limitation or restriction.

Renew Missouri's requests that the Commission direct Ameren Missouri to conduct a study on integrating distributed generation technologies and TOU rate plans is reasonable. In view of the forgoing, the Commission will direct Ameren Missouri to conduct such a study.

G. What changes should be made, if any, to the Non-Residential, Non-Lighting rate options offered by the Company?

- a. **Should Staff's proposal to introduce a time-based overlay for all Non-Residential, Non-Lighting classes for all customers who have an AMI meter and are not served on a time-based schedule be adopted?**
- b. **Should MEGC's proposed shift to increase the demand component for Large General Service and Small Primary Service and decrease energy charges be adopted?**
- c. **Should the Commission approve MEGC's proposed optional electric vehicle (EV) charging 3M/4M rate design?**
- d. **Should the Rider C factor be adjusted?**
- e. **Should the values for the monthly customer charge, Rider B credits, and Reactive Charge remain consistent for SPS and LPS customers because these costs are effectively the same regardless of the customer class?**

These sub-issues are related and the Commission will address them together.

Findings of Fact:

76. Staff recommends the Commission order that non-residential customers with AMI meters be billed time-based rates through the introduction of a revenue neutral TOU overlay to be introduced into a parallel rate structure for each non-residential non-lighting rate class. Essentially creating time based rates where, prior to Staff's overlay, they did not exist.¹¹⁴

77. Staff's desire to explore rate structure changes that would apply to non-residential large customers belongs in a separate proceeding, where staff could collaborate with Ameren Missouri and interested parties prior to the next rate case filing.

¹¹⁴ Exhibit 136 Sarah Lange Direct, page 40

This approach (followed by Evergy) permits all participants to have an opportunity to consider impacts, solutions, and have their concerns heard.¹¹⁵ Both MECG and MIEC recommend that Staff's non-residential rate design proposals be evaluated in a working docket.¹¹⁶ MECG asks the Commission to reject Staff's TOU overlay and establish the non-residential working docket ordered in File No. ER-2021-0240. The non-residential working docket will give all interested parties a collaborative opportunity to fully examine relevant factors, inputs, and outputs to ensure that the resulting rates are cost-based, equitable, and just and reasonable.¹¹⁷

78. MECG's witness, Steve Chriss's analysis suggests that the LGS and SPS classes are paying rates in excess of their cost of service.¹¹⁸

79. MECG proposes that the Commission take steps to address an over-recovery of the demand charge for LGS and SPS customers through the energy charge by increasing the summer and winter demand charges for LGS and SPS by one and one-half times the percent of the approved class percentage increases.¹¹⁹

80. Allocation of fixed production plant costs on an energy basis can introduce shifts in cost responsibility from lower load factor classes to higher load factor classes.¹²⁰

81. It would be directionally consistent with cost of service principles for the Commission to increase the proportion of revenues coming from the demand charge to the extent that the distribution demand related costs are not currently fully reflected by the level of the current demand charge.¹²¹

¹¹⁵ Exhibit 351, Brubaker Rebuttal, pages 12-13

¹¹⁶ Exhibit 351, Brubaker Rebuttal, pages 12-13, and Exhibit 401, Chriss Rebuttal, page 12.

¹¹⁷ Exhibit 401, Chriss Rebuttal, pages 4-5.

¹¹⁸ Exhibit 400, Chriss Direct, page 25.

¹¹⁹ Exhibit 400, Chriss Direct, page 5.

¹²⁰ Exhibit 400, Chriss Direct, page 11.

¹²¹ Exhibit 40, Wills Rebuttal, pages 24-25.

82. Any amount of movement in the demand charge relative to the energy charge should be gradual to avoid any significant bill impacts on the customers in the class that might arise from significant changes in the relative weighting of the different charges.¹²²

83. Any changes in the demand charge should be moderated to maintain gradualism in the way they impact all customers including those with EV charging applications.¹²³

84. MCEG proposes the Commission order Ameren Missouri to create alternative optional LGS and SPS rates for EV charging customers. MCEG proposes to reallocate the summer demand charge revenue requirement to the first block of the summer energy rate, and reallocate the winter demand charge revenue requirement to the first block of the winter energy rate. MCEG says this would reduce the barrier to entry for very low usage EV chargers versus LGS and SPS's demand charges, and it would recover the demand charge revenue requirements in the low load factor first blocks.¹²⁴

85. A new EV rate would restrict the rate to only customers with significant EV charging applications, which would require additional administrative procedures to verify the eligibility of the customer for the optional rate.¹²⁵

86. A new EV rate would potentially risk having every low load factor customer in these rate classes adopt the optional rate and reduce their bill as a "free rider" on the EV rate.¹²⁶

¹²² Exhibit 40, Wills Rebuttal, page 25.

¹²³ Exhibit 40, Wills Rebuttal, page 25.

¹²⁴ Exhibit 400, Chriss Direct, pages 36-37.

¹²⁵ Exhibit 40, Wills Rebuttal, page 25.

¹²⁶ Exhibit 40, Wills Rebuttal, p. 25.

87. Staff opposes the creation of rate schedules for LGS and SPS EV charging customers. MEGC's proposal would substantially reduce the accretive earnings assumed in justifying the Charge Ahead portfolio. MEGC's EV proposal is also not cost based because it benefits customers with an assumed load shape regardless of cost-causation. Finally, this is a specialty end-use rate, which is contrary to Staff's proposed rate schedule modernization.¹²⁷

88. The Rider C factor adjusts the usage billed to customers to account for energy losses where the meter is configured on the opposite side of a transformer than it would be in standard circumstances.¹²⁸

89. Staff recommends an adjustment of the Rider C factor from 0.68 percent to 0.72 percent.¹²⁹ Staff recommends that the credits offered under Rider B and Rider C be held constant absent sufficient information to evaluate how reasonable they are.¹³⁰

90. Rider B is used to credit customers that own their own substation equipment so that they do not pay for equipment they do not use.¹³¹

91. Staff witness Sarah Lange was unable to study the relationship of cost causation and revenue sufficiency associated with the discounts provided to certain customers under Rider C because Staff did not have the information to study the cost causation of these discounts or the reasonableness of the charges.¹³²

92. SPS and LPS customers are not the same. Parties to a rate case often group these classes together in CCOSs because customers can switch between these

¹²⁷ Exhibit 137, Lange Rebuttal, pages 62-63.

¹²⁸ Exhibit 37, Hickman Surrebuttal, page 3.

¹²⁹ Exhibit 137, Lange Rebuttal, page 16.

¹³⁰ Exhibit 136, Lange Direct, page 51.

¹³¹ Exhibit 35, Hickman Direct, page 27.

¹³² Exhibit 136, Lange Direct, page 50.

rate schedules. Nevertheless, SPS and LPS are different rate schedules with different requirements. With the growth in the utility cost of service related to distribution rate base, it is necessary to undertake a more granular study of the costs caused by and allocated to customers on these rate schedules separately.¹³³

93. Three charges need to remain consistent for SPS and LPS customers because these costs are essentially the same regardless of the customer class: 1) The monthly customer charge; 2) The Rider B credits (customer-owned substation discounts); and 3) The Reactive charge.¹³⁴

Conclusions of Law:

V. There are no additional conclusions of law for this issue.

Decision:

The Commission determined to allocate any rate increase as an even percentage to the classes, and not based upon Staff's CCOSS or on its proposed rate modernization. Therefore, it does not make sense for the Commission to adopt Staff's overlay for non-residential non-lighting customers at this time. The Commission has similar concerns about authorizing Staff's overlay as it did with Staff's CCOSS. Mainly, that Staff couldn't obtain sufficient information from Ameren Missouri. The Commission does not find it reasonable to adopt Staff's proposed overlay.

The Commission does not find that a shift between demand charges and energy charges within the LGS and SPS rate classes is appropriate at this time. The Commission said as much in File No. ER-2021-0240. The Commission does find that this issue is

¹³³ Exhibit 137, Lange Rebuttal, page 3.

¹³⁴ Exhibit 32, Harding Direct, pages 10-11.

appropriate for the non-residential working docket, where the parties can collaborate and look at ways to adjust these classes more toward their relative costs of service.

The Commission also finds it appropriate for MEGC's proposed optional EV charging rate to be examined in the non-residential working docket. The Commission has concerns about allowing a special rate that, is potentially, not based upon causation. Likewise the Commission does not find it appropriate to adjust the Rider C factor or alter the Rider B values due to absent sufficient information to do so. All of these issues involve the non-residential classes. The Commission finds these sub-issues appropriate to address in the non-residential working docket ordered in File No. ER-2021-0240. Because Ameren Missouri filed this case before the Commission established a working docket via separate order, the Commission will issue an order opening a non-residential working docket within 30 days of the effective date of this order

H. Rate Structures – Information, Studies, and Working Docket

- a. Should the cost-causation and rates of Riders B & C be fully evaluated?**
- b. Ordered Rider B Study - Did Ameren Missouri comply with the Report and Order in ER-2021-0240 at pages 31 – 34, where the Commission addressed whether it should require “Performance of a study of the reasonableness of the calculations and assumptions underlying Rider B to be filed as part of the Company’s direct filing in its next general rate case?” The decision paragraph at pages 33-34 states “The Commission will not suspend the Rider B credits, but it believes the question of the proper calculation of those credits should be further addressed in Ameren Missouri’s next rate case. Therefore, the Commission will direct Ameren Missouri to study the reasonableness of the calculations and assumption underlying Rider B and to file the results of that study as part of its direct filing in its next general rate case.”**
- c. Should Ameren Missouri be ordered to record transmission assets related to maintenance of voltage support due to the retirement of large synchronous generators be recorded to new subaccounts?**
- d. Should Ameren Missouri be ordered to retain customer and rate schedule characteristics related to draws of reactive demand?**

- e. **Should Ameren Missouri be ordered to create subaccounts within distribution accounts and transmission accounts (plant and reserve) for recording infrastructure related to utility-owned generation?**
- f. **Should Ameren Missouri be ordered to provide a study of the customer specific infrastructure, by account, by rate schedule, by voltage, in its next general rate case?**
- g. **Should Ameren Missouri be ordered to provide data concerning the level of rate base and expense associated with radial transmission facilities including substation components, by customer?**
- h. **What information should Ameren Missouri provide for any rate modernization workshop, or for its next general rate case?**
- i. **Should Ameren Missouri be required to study potential rate structures and make available related determinants?**

These sub-issues are related and the Commission will address them together.

Findings of Fact:

94. Ameren Missouri performed a study of the reasonableness of Rider B.¹³⁵

The result of the study was a discount of \$1.34 per kW.¹³⁶

95. Ameren Missouri will consider the study's results in future ratemaking proposals, and it will look for opportunities to bring the discount more in line with CCOSS results consistent with other class adjustments.¹³⁷

96. Due to the unavailability of reliable data, Staff was forced to rely on Ameren Missouri's allocations for many of its calculations.¹³⁸

97. Ameren Missouri does not consider it appropriate to require the Company to undertake what it believes is unreasonable data collection processes to facilitate the further refinement of results of Staff's approach to CCOSS.¹³⁹ Ameren Missouri's biggest

¹³⁵ Exhibit 35, Hickman Direct, page 26.

¹³⁶ Exhibit 35, Hickman Direct, page 28.

¹³⁷ Exhibit 35, Hickman Direct, page 28.

¹³⁸ Exhibit 136, Lange Direct, pages 14, 16, 24, 38,

¹³⁹ Exhibit 36, Hickman Rebuttal, page 22.

problem with the data Staff seeks is that the Company believes it is driving a methodological change.¹⁴⁰

98. To improve the reliability of CCOSs, Staff recommends the ordered studies and reviews discussed in witness Sarah Lange's testimony, and that Ameren Missouri also retain data discussed in her testimony.¹⁴¹ Staff's suggestions in the findings of fact below are related to the unavailability of data.

99. Staff suggests the Commission direct Ameren Missouri to record transmission assets related to maintenance of voltage support due to the retirement of large synchronous generators to new subaccounts.¹⁴²

100. Staff suggests the Commission direct Ameren Missouri record customer and rate schedule characteristics related to draws of reactive demand for study for use in allocators, and for creation of determinants for customer billing.¹⁴³

101. Staff suggests the Commission direct Ameren Missouri to retain a reasonable level of information for study for use in allocators, and for creation of determinants for customer billing.¹⁴⁴

102. Staff suggests the Commission direct Ameren Missouri to create subaccounts within distribution accounts and transmission accounts (plant and reserve) for recording infrastructure related to utility-owned generation, or infrastructure related to generation other than net-metering or parallel generation.¹⁴⁵ Based upon Ameren Missouri's answers to specific data requests, Staff classified and segregated

¹⁴⁰ Transcript, page 255.

¹⁴¹ Exhibit 136, Lange Direct, page 56.

¹⁴² Exhibit 137, Lange Rebuttal, page 34.

¹⁴³ Exhibit 137, Lange Rebuttal, page 34.

¹⁴⁴ Exhibit 137, Lange Rebuttal, page 34.

¹⁴⁵ Exhibit 136, Lange Direct, page 14.

representative assets that are recorded to the distribution accounts but are within the exclusive use of individual customers. Based upon this Staff recommends in future cases, Ameren Missouri provide a study of the customer-specific infrastructure, by account, by rate schedule, by voltage.¹⁴⁶

103. Based on existing data deficiencies, Staff suggests that Ameren Missouri provide data concerning the level of rate base and expense associated with radial transmission facilities including substation components, by customer.¹⁴⁷

104. Staff has requested that Ameren Missouri provide the following for a rate modernization workshop.

- 1) Company to provide a study estimating costs of customer-specific infrastructure by class and by (1) HV, (2) Primary, (3) “average” LGS customer, (4) “average” SGS customer, (5) “average” residential customer. Residential may be broken down further by customers served at 3 phase, customers using in excess of 30kW in any hour, customers in apartments vs detached, etc.
 - a. In distribution accounts 364-367 in total, and
 - b. In substation accounts total.
 - c. Two sets of estimates of each to be developed
 - i. One set of estimates based on historic costs, supported by workpapers,
 - ii. One set of estimates based on current installation costs, informed by ongoing line extension requests or similar data, supported by workpapers
- 2) Company to provide data concerning the level of rate base and expense associated with radial transmission facilities including substation components, by customer.
- 3) Company to provide a study to identify assets in distribution accounts that exist to support Company-owned distributed generation.
- 4) Company to provide a study of the costs associated with service under “Rider RDC, Reserve Distribution Capacity Rider.”

¹⁴⁶ Exhibit 136, Lange Direct, page 14.

¹⁴⁷ Exhibit 138, Lange Rebuttal, page 42.

- 5) Company to provide a study estimating costs by mile of (1) HV, (2) Primary, (3) relatively high voltage secondary, (4) relatively low voltage secondary separately for overhead and underground,
 - a. In distribution accounts 364-367 in total, and
 - b. In substation accounts in total.
 - c. Two sets of estimates of each to be developed
 - i. One set of estimates based on historic costs, supported by workpapers,
 - ii. One set of estimates based on current installation costs, informed by ongoing line extension requests or similar data, supported by workpapers.
 - d. Miles by voltage and overhead/underground to be provided, with indication of whether or not customer-specific facilities are included.
- 6) Company to provide a study of the level of net metered generation supplied by each class, and to specifically identify the extent to which hourly load data provided for weather normalization, class allocations, etc reflects netting from net metered generation.
- 7) Company to provide a breakdown of the values recorded to Account 903 to review the extent to which those costs would be expected to vary with the addition of a new customer, or the discontinuance of service of an existing customer.¹⁴⁸

105. Staff proposes that as Ameren Missouri completes its installation of AMI metering, it is reasonable to require Ameren Missouri to prepare information to develop modern rate structures for potential implementation in its next rate case.¹⁴⁹

Conclusions of Law:

W. The Commission may prescribe uniform methods of keeping accounts and records to be observed by electric corporations.¹⁵⁰ The Commission may also prescribe by order, the accounts into which particular outlays and receipts shall be entered, charged, or credited.¹⁵¹

¹⁴⁸ Exhibit 138, Lange Surrebuttal, pages 42-43.

¹⁴⁹ Exhibit 136, Lange Direct, page 51.

¹⁵⁰ Section 393.140(4) RSMo.

¹⁵¹ Section 393.140(8) RSMo.

Decision:

The Commission finds it reasonable, given the unavailability of information for Riders B and C, to direct an evaluation of the cost-causation and rates for those riders. So, Ameren will work with Staff to fully evaluate Riders B and C.

The Commission finds Ameren Missouri minimally complied with the Commission's Report and Order in File No. ER-2021-0240. However, in the range of compliance with a Commission order, this is in the low level of compliance. The reasonableness of the calculations and assumptions underlying Rider B seems an appropriate subject for the non-residential rate design working docket.

Much of the other information Staff requested Ameren Missouri provide is appropriate for the non-residential working docket. Some of Staff's proposals will make information and data more readily available for future rate cases. To that end, the Commission directs Ameren Missouri to record transmission assets related to maintenance of voltage support due to the retirement of large synchronous generators be recorded to new subaccounts. The Commission also directs Ameren Missouri to create subaccounts within distribution accounts and transmission accounts for recording infrastructure related to utility-owned generation.

So that sufficient information and data is available for analysis, The Commission finds it reasonable to direct Ameren Missouri to conduct and provide a study of the customer-specific infrastructure, by account, by rate schedule, by voltage, in its next general rate case. Additionally, the Commission finds it reasonable to direct Ameren Missouri to retain customer and rate schedule characteristics related to draws of reactive demand. Ameren Missouri is also directed to provide data concerning the level of rate

base and expense associated with radial transmission facilities, including substation components by customer, for its next rate case.

Staff expressed multiple times that it was unable to complete analysis necessary for an exploration of rate modernization because the information that Staff requested was unavailable. Staff also stated that it did not know “the universe”¹⁵² of what information exists. Staff supplied, at the hearing and in testimony¹⁵³, an extensive list of information that would assist its analysis in any rate modernization workshop. The Commission is reluctant to order Ameren Missouri to provide all the information that Staff requested, not because the Commission believes it unnecessary, but because the Commission does not know the full extent of information Ameren Missouri can provide, or the expense associated with collecting that information. The Commission finds it reasonable that Ameren Missouri provide more granular data for any rate modernization workshop, non-residential working docket, and the Company's next rate case. Therefore, the Commission directs Ameren Missouri to provide the information Staff requested that it can provide at reasonable expense. Ameren Missouri shall also work with Staff to provide a better understanding of what information is available, so that Staff can better request information the Company can access.

Finally, Staff has requested that the Commission direct Ameren Missouri to study potential rate structures and make available related determinants. The Commission does not find this request reasonable and will not order Ameren Missouri to conduct such a study.

¹⁵² Transcript, page 411.

¹⁵³ That list is also included above in the findings of fact for this issue.

- I. Should the Commission authorize Ameren Missouri to track some valuation of estimated revenue changes that may arise from residential customer rate switching?**
- a. Is the Ameren Missouri requested method for calculating the tracker balance reasonable?**
 - b. Are alternative approaches available to address what Ameren Missouri characterizes as an inherent disincentive for the utility to pursue a rapid transition toward broad adoption?**

Findings of Fact:

106. A tracker is a deferral accounting mechanism.¹⁵⁴

107. Ameren Missouri requests the Commission authorize it to track changes in revenue caused by residential customers adopting new TOU options.¹⁵⁵

108. Ameren Missouri asserts that, unlike other demand side management measures under the Missouri Energy Efficiency Investment Act, there is an inherent disincentive for Ameren Missouri to pursue rapid transition and adoption of TOU rates. Ameren Missouri contends that a rate switching tracker would address that disincentive.¹⁵⁶

109. Granting Ameren Missouri's two-way rate switching tracker would mitigate any revenue erosion and any excess revenues could be amortized and returned to customers in a future rate case.¹⁵⁷

110. The rate switching tracker would be calculated for each customer that adopts an optional residential TOU rate. The customer's bill on the new rate would be compared to what their bill would have been on the Anytime User rate.¹⁵⁸

¹⁵⁴ Exhibit 39, Wills Direct, page 18, citing the Report and Order in File No. ET-2018-0132.

¹⁵⁵ Exhibit 39, Wills Direct, page 14.

¹⁵⁶ Exhibit 39, Wills Direct, page 12.

¹⁵⁷ Exhibit 39, Wills Direct, pages 16-17.

¹⁵⁸ Exhibit 39, Wills Direct, page 17.

111. A tracker is not necessary for the Commission to order a rate modernization plan in this and future cases consistent with the large capital investment made to enable TOU rates. Public Counsel believes it is premature to consider trackers based on the non-substantial costs and speculative information in this case.¹⁵⁹

112. Ameren Missouri has done no analysis quantifying any changes in current residential load that it projects will be caused by its TOU rate plans. Lower bills for opt-in users do not benefit all ratepayer justifying a tracker.¹⁶⁰

113. Ameren Missouri requested a two-way tracker in File No. ER-2019-0335 that the Company referred to as a “Rate Migration Tracker”. Ameren Missouri’s Rate Migration Tracker, similar to this case, was to authorize it to track changes in revenue arising from customers adopting new rate offerings (TOU rate plans).¹⁶¹ Ameren Missouri expressed concern about revenue erosion from customers switching rates in that case.¹⁶² The Commission did not authorize Ameren Missouri’s Rate Migration Tracker.¹⁶³

Conclusions of Law:

X. There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri asks the Commission for authority to implement a two-way tracker to quantify and track any changes in revenue caused by customers adopting TOU rate plans. A tracker would permit the Company to track changes in revenue for possible treatment by the Commission in a future rate case. The Company’s rationale for

¹⁵⁹ Exhibit 201, Marke Surrebuttal, page 26.

¹⁶⁰ Exhibit 137, Lange Rebuttal, page 7.

¹⁶¹ File No. ER-2019-0335, Direct Testimony of Steven Wills, page 65. The Commission took official notice of Wills direct testimony during the evidentiary hearing in this case.

¹⁶² File No. ER-2019-0335, Direct Testimony of Steven Wills, page 66.

¹⁶³ Transcript, page 216.

requesting a tracker is that it wants to track any loss in its revenues, presumably, for recovery in a future rate case.

The Commission did not approve a rate switching tracker for Ameren Missouri in File No. ER-2019-0335. The Commission sees no benefit to approving this tracker. The tracker will not track all Ameren Missouri customers. The tracker will only track those customers adopting TOU rates and compare their bills to the Anytime rate plan to quantify revenue changes. There is insufficient analysis for a rate switching tracker. Ameren Missouri bears the burden of proof. The Commission finds that the Company failed to present sufficient evidence that its proposed two-way rate switching tracker is needed. The Commission denies Ameren Missouri's request for a two-way rate switching tracker.

2. Depreciation/Continuing Property Record (CPR).

A. Should the Company be ordered to change the manner that property retirements are recorded to its continuing property record (CPR)?

Findings of Fact:

114. A CPR is a record of plant assets that electric utilities are required to maintain by Commission Rule, 20 CSR 4240-20.030 (3)(A).¹⁶⁴

115. The assets are segregated by individual retirement units or in some instances, groups of assets can be accounted for in mass property accounts. Each category of mass property requires the following information:

- 1) A general description of the property and quantity;
- 2) The quantity placed in service by vintage year;
- 3) The average cost; and

¹⁶⁴ Exhibit 117, Cunigan Direct, page 10.

4) The plant control account to which the costs are charged.¹⁶⁵

116. Location information is not required for mass property asset CPRs while it is required of all plant assets (location property) not classified as mass property.¹⁶⁶

117. For location property (non-mass property) the actual asset to be retired can be determined within Ameren Missouri's accounting records. Ameren Missouri's plant accounting group works with the business line to identify the continuing property record to be retired when the asset is taken out of service.¹⁶⁷

118. Ameren Missouri maintains multiple databases of plant asset records. Its response to MPSC Data Request 565 was that accounting records are the recordkeeping system that maintains vintage information of plant assets. Ameren Missouri's operational recordkeeping system contains the location of all poles.¹⁶⁸

119. Mass property assets are relatively homogeneous property units that tend to be retired individually. Ameren Missouri includes poles, meters, overhead conductors, underground conductors, conduit, towers, fixtures, and line transformers in its mass property accounting records.¹⁶⁹

120. Depreciation rates estimate the reduction in an assets value of over time.¹⁷⁰

121. Survivor curves are estimates based on statistical analysis.¹⁷¹ Iowa curves represent common survival rates and patterns of assets, and are widely used to estimate

¹⁶⁵ Exhibit 117, Cunigan Direct, page 10-11.

¹⁶⁶ Transcript, page 553 and Exhibit 117, Cunigan Direct, page 10..

¹⁶⁷ Transcript pages 518-519.

¹⁶⁸ Exhibit 01, Response to DR 565.

¹⁶⁹ Exhibit 47, Lansford Rebuttal, page 10, and Exhibit 122, Eubanks Rebuttal, Schedule CME-r1, page 11.

¹⁷⁰ Transcript, page 554.

¹⁷¹ Transcript, page 554.

depreciation.¹⁷² Iowa type curves contain the range of survivor characteristics usually experienced by utilities and other industrial companies.¹⁷³

122. Ameren Missouri acknowledges that it is best to identify the actual vintage of an asset. Nevertheless, the Company states that realizing that goal is unrealistic. Additionally, Ameren Missouri asserts that its process and methods of retiring mass property assets is the same or similar to many other utilities.¹⁷⁴

123. Ameren Missouri also acknowledges that vintage and location are not asset information that it collects for its mass asset CPRs. By way of example, if a 10-year old 40-foot (40') pole is retired, the information provided to the PowerPlan asset accounting system includes the unit (40' pole) and the quantity of that unit retired. The software uses the Iowa survivor curve for the account where 40' poles are recorded to determine what vintage year it will select for retirement. Poles typically are in service well beyond 10-years so the vintage selected by PowerPlan could be 70-years for the retirement of the pole.¹⁷⁵

124. Ameren Missouri's example of the retirement of a 10-year-old pole using the mass property software, PowerPlan, applies the applicable survivor curve that may indicate that it is statistically more likely that the pole would have been older, say 70-years, hypothetically. Accounting records would be updated to reduce the number of 70-year-old poles by 1 as a result of this hypothetical retirement. In contrast the operational records would include the location of the retired pole and any available historical data on

¹⁷² Exhibit 117, Cunigan Direct, page 8.

¹⁷³ Exhibit 42, Spanos Direct, page 8.

¹⁷⁴ Exhibit 43, Spanos Rebuttal, pages 17-18.

¹⁷⁵ Exhibit 185, Response to DR 439 and Attachment.

that specific pole, which then allows the operational records to be updated for that specific 10-year-old pole's retirement.¹⁷⁶

125. Mass property items to retire are provided to plant accounting. The specific asset being retired cannot be identified within Ameren Missouri's mass property accounting records. So, retirements are selected based on retirement curves and statistical analysis provided by the Company that performs Ameren Missouri's depreciation studies. For location property the actual asset to be retired can be determined within the Company's accounting records.¹⁷⁷

126. The life characteristics of categories of mass property are influenced by statistical analysis. Commission ordered depreciation rates and the survivor curves underlying those depreciation rates determine the vintage of assets to be removed from Ameren Missouri's accounting records upon retirement.¹⁷⁸

127. Ameren Missouri's witness Spanos used the straight line remaining life method of depreciation using the average service life procedure, applied on a remaining life basis. Ameren Missouri alleges these technology solutions and accompanying statistical analysis that supports the processing of retirements for mass property in a Company's CPR is a necessity for keeping the property records accurate and as current as possible.¹⁷⁹

128. Staff accounts for depreciation by reducing the book value of the assets over the estimated useful life of the asset. The rate of reduction is the depreciation rate. The depreciation rate is determined by looking at historical data on asset lives, retirement

¹⁷⁶ Exhibit 185, Response to DR 439 and Attachment.

¹⁷⁷ Exhibit 184, Response to DR 209

¹⁷⁸ Exhibit 185, Response to DR 439 and Attachment.

¹⁷⁹ Exhibit 42, Spanos Direct, Schedule JJS-D2, p. iii.

costs, and salvage costs. The application of depreciation rates results in a depreciation expense that is the depreciation rate times the book value of the assets. This depreciation expense accumulates in a depreciation reserve, which offsets the original investment level for purposes of calculating rates.¹⁸⁰

129. Staff utilized the straight-line method, broad group-averaging life procedure, and the remaining life technique for the depreciation of distribution accounts 364-371 and 373.¹⁸¹ The combined plant balance and book reserve for these accounts is \$6,391,076,638 and \$2,945,110,727, respectively.¹⁸²

130. Ameren Missouri provided a copy of its accounting records for all plant assets. These records allegedly contain life characteristics as required under FERC USOA. Ameren Missouri maintains separate operational records for its energy delivery assets which document the vintage of those assets.¹⁸³

131. Ameren Missouri's November 15, 2022 supplemental response to Staff data request 209.1 indicates that Ameren Missouri is not keeping all of the required records for their mass property accounts. Ameren Missouri stated, "Vintage, location, voltage, etc. are not a part of the asset information collected (which is by design because not collecting such information is the essence of and a key benefit of using mass property accounting)."¹⁸⁴

132. Mass property items that are to be retired are provided to plant accounting through a work management system. Because the specific asset being retired cannot be

¹⁸⁰ Exhibit 117, Cunigan Direct, page 2.

¹⁸¹ Exhibit 117, Cunigan Direct, page 6 and TR, Page 551.

¹⁸² Exhibit 118, Cunigan Rebuttal, Page 5-6.

¹⁸³ Exhibit 185, Response to DR 439 and Attachment.

¹⁸⁴ Exhibit 117, Cunigan Direct, page 11.

identified within Ameren Missouri's mass property accounting records, retirements are selected based on retirement curves and statistical analysis.¹⁸⁵

133. Staff refutes that Ameren Missouri field personnel would need to label every foot of conduit so that it can be recorded in Ameren Missouri's work order system. Mass property is for homogenous high count low value assets. Ameren Missouri includes some items in mass property with values approaching \$1 million. Therefore, it would be appropriate to review individual mass property asset groups or accounts.¹⁸⁶

134. Tracking the actual mass property retired allows the curve shape to change. Using the retirements generated by the software only mimics the existing curve.¹⁸⁷

135. Recording mass property retirements at the average cost of an older vintage selected by software rather than the average cost of the actual vintage would allow mass property assets to be overstated in rate base, assuming rising costs over time.¹⁸⁸

136. Ameren Missouri's response to MPSC data request 440 indicates that Ameren Missouri maintains recordkeeping of maintenance, retirement and replacement of property assets, including mass property assets by age and vintage through its data collection systems.¹⁸⁹

137. Staff is open to discussion with Ameren Missouri on how a new retirement process could be used for mass property accounts and assets.¹⁹⁰

¹⁸⁵ Transcript, page 518.

¹⁸⁶ Transcript, pages 555-557.

¹⁸⁷ Transcript, page 561.

¹⁸⁸ Transcript, pages 568-569.

¹⁸⁹ Transcript pages 573-575 and Exhibit. 186, Response to DR 440.

¹⁹⁰ Transcript, page 557.

138. The problem with Ameren Missouri's use of a program to select items for retirement based on Iowa survivor curves for mass property is that the retirement data does not match Ameren Missouri's plant in service.¹⁹¹

Conclusions of Law:

Y. Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the CPR database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

Z. Commission Rule 20 CSR 4240-20.030(3)(A) states that an electric corporation subject to the commission's jurisdiction must "Maintain plant records of the year of each unit's retirement as part of the continuing plant inventory records".

AA. Commission Rule 20 CSR 4240-20.030 (3)(G) states that when implementing section (1), regarding plant acquired or placed into service after 1993, that each electrical corporation subject to the Commission shall:

Estimate original cost with an appropriate average of the original cost of the units by vintage year, with due allowance for any difference in size and character, when it is impracticable to determine the original cost of each unit, when implementing the provisions of Part 101 Electric Plant Instructions to 10.D and paragraph 15.060.10.F

BB. Federal Rule 18 CFR Part 101 definition eight requires a utility to record 1) a general description of the property and quantity; 2) The quantity placed in service by vintage year; 3) The average cost as set forth in Plant Instructions 2 and 3 of this part; and 4) The plant control account to which the costs are charged, for each category of mass property.

¹⁹¹ Exhibit 117, Cunigan Direct, page 8.

CC. Federal Rule 18 CFR Part 101, Electric Plant Instructions, 10.D provides:

The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

Decision:

By not tracking the actual vintage year of retirements, Ameren Missouri is also not tracking the actual dollars for those retirements. So, two of the pieces of information Ameren Missouri is required to track in its CPR are not being recorded correctly. The Commission finds that, by not tracking the correct vintage year of mass property retirements, Ameren Missouri is not recording information in its CPR as required by the Commission's rules.

Staff requests that the Commission direct Ameren Missouri to stop letting PowerPlan determine what vintages to retire for mass property assets, in order to comply with Commission Rules. It is not immediately clear how Ameren Missouri can most efficiently and effectively resolve this issue. Ameren Missouri may need to rely on its operational data base plant asset records for vintage information and its work management system. Ameren Missouri, upon the retirement of any mass property asset, should identify the actual vintage year that mass property asset was placed in service so that mass property asset retirements, removed from Ameren Missouri's CPRs result in more accurate recording of asset vintages and dollar values going forward.

Ameren Missouri proposes the Commission order the Company, Staff, Public Counsel and any other interested stakeholders, which may include other regulated Missouri utilities, to meet and discuss the mass property retirement process further. Staff's witness indicated that Staff would be open to discussions about mass property accounts and assets. The Commission finds Ameren Missouri's proposed solution reasonable. Ameren Missouri shall meet with Staff, Public Counsel, and other interested stakeholders to resolve Staff's concerns with how mass property assets are being recorded in the Company's CPR. Staff shall inform the Commission of any resolution by filing an appropriate pleading.

3. Identification of Avoided Capital Investments for the Sioux and Labadie Coal Plants.

A. Should the Company be required to identify avoided capital investments should the Sioux or Labadie Energy Centers retire earlier than currently planned as recommended by Sierra Club witness Comings?

a. Should Ameren Missouri be required to file a certificate of convenience and necessity prior to installing any new air controls in response to EPA regulations?

Findings of Fact:

139. Sierra Club recommends the Commission order Ameren Missouri to evaluate the costs of retiring the Sioux Energy Center (Sioux) and Labadie Energy Center (Labadie) coal powered generation plants early as compared to the costs of retrofits needed to comply with regulations proposed by the U.S. Environmental Protection Agency.¹⁹²

140. Sierra Club argues that if avoidable costs are incurred, but the Company subsequently decides to retire the units earlier than currently planned, then ratepayers

¹⁹² Exhibit 500, Comings Direct, pages 31-32.

will not realize savings from avoiding those costs because they were included in rates and these costs will then become stranded.¹⁹³

141. The Michigan Public Service Commission has adopted a similar framework to identify potentially avoidable utility capital (environmental and non-environmental) and major maintenance generation plant expenditures due to the possibility of earlier retirement. Subsequent Michigan Public Service Commission rulings disallowed some avoidable costs from being recovered in rates.¹⁹⁴

142. Ameren Missouri has currently scheduled the Sioux units to retire in 2030. The Labadie plant is currently scheduled to retire in 2042.¹⁹⁵

143. The Sioux plant has operated at 50 percent of its capacity factor since 2019, because it is expensive to operate and is frequently offline due to forced outages.¹⁹⁶

144. Ameren Missouri is retiring its Rush Island Energy Center coal generation facility early instead of installing flue gas desulfurization equipment to comply with a U.S. District Court decision.¹⁹⁷ Sierra Club points to Rush Island's early retirement by 2026 as a reason for the Commission to order Ameren Missouri to evaluate costs for its Sioux and Labadie plants.¹⁹⁸

145. Ameren Missouri indicated in response to Sierra Club Data Request 1-11 that it plans to have capital expenditures at both its Sioux and Labadie generation plants over the next five years.¹⁹⁹

¹⁹³ Exhibit 500, Comings Direct, page 30.

¹⁹⁴ Exhibit 500, Comings Direct, pages 30-31.

¹⁹⁵ Exhibit 500, Comings direct, page 14.

¹⁹⁶ Exhibit 500, Comings direct, page 15.

¹⁹⁷ Exhibit 50, Michels Direct, page 2.

¹⁹⁸ Exhibit 500, Comings direct, page 23.

¹⁹⁹ Exhibit 500, Comings Direct, page 29.

146. In February 2022, the U.S. Environmental Protection Agency proposed the Good Neighbor Plan. The Good Neighbor Plan requires reductions in nitrogen oxide (NOx) emissions to reduce the formation of ground-level ozone.²⁰⁰ NOx is a precursor to ozone.²⁰¹

147. Missouri's generation plants emitted 20,388 tons of nitrogen oxide during ozone season in 2021. The Sioux and Labadie plants account for 29 percent of those emissions.²⁰²

148. The Sioux and Labadie plants may be affected by future environmental regulations.²⁰³ The Good Neighbor Plan would result in a 73 to 76 percent reduction of NOx at the Sioux units and a 34 to 42 percent reduction at the Labadie units.²⁰⁴

149. Ameren Missouri believes this issue is not appropriate for a rate case. Ameren Missouri asserts that this issue is more appropriately handled within the Company's Integrated Resource Planning (IRP). The Commission's IRP rules allow Sierra Club and other stakeholders to suggest issues for Ameren Missouri to address in its IRP process. Both for the IRP's annual updates and Triennial filings.²⁰⁵

150. Sierra Club previously asked the Commission require Ameren Missouri, as part of its 2023 IRP analysis to analyze and document the net present value of continuing to operate its coal-burning generation units. The Commission did not include Sierra Club's request in its order concerning issues the Company must address in its 2023 IRP.²⁰⁶

²⁰⁰ Exhibit 500, Comings direct, pages 21-22.

²⁰¹ Exhibit 500, Comings direct, page 20.

²⁰² Exhibit 500, Comings direct, page 23.

²⁰³ Exhibit 500, Comings direct, page 7.

²⁰⁴ Exhibit 500, Comings direct, page 23.

²⁰⁵ Exhibit 51, Michels Rebuttal, page 2.

²⁰⁶ Exhibit 51, Michels Rebuttal, pages 2-3.

151. Sierra Club's filing in Ameren Missouri's 2023 IRP asked that Ameren Missouri be ordered to study whether retaining each unit in operation at its Sioux Energy Center and Labadie Energy Center benefits customers in comparison with an alternative suite of resources. No suggestion was made in that 2023 IRP filing to require the Company to track investments that could be avoided in conjunction with a decision to accelerate the retirement of coal-fired units, as Witness Comings is recommending in this case.²⁰⁷

152. An evaluation of avoidable costs for Sioux and Labadie is important for future rate cases because early retirement may affect Ameren Missouri's capital spending. If it is no longer cost-effective to continue to run those units Ameren Missouri may consider retiring them early.²⁰⁸

Conclusions of Law:

DD. Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

Decision:

The Sierra Club asks the Commission to order Ameren Missouri to identify avoided capital investments because of its concern that the Sioux or Labadie Energy Centers may retire earlier than currently planned, leading to the potential recovery of stranded costs in rates. While Ameren Missouri asserts that this issue is more appropriately addressed

²⁰⁷ Exhibit 51, Michels Rebuttal, Pages 2-3.

²⁰⁸ Exhibit 500, Comings direct, page 14.

within the Company's IRP process, Sierra Club argues that the IRP process is not a contested proceeding. There is no formal approval of Ameren Missouri's decisions in an IRP.

The Commission finds future environmental regulations may require costly retrofits that could prompt Ameren Missouri to retire the Sioux and Labadie plants early. Ultimately, ratepayers pay the costs of these plants. When generation plants cannot operate when needed, at the capacity needed, or when they require costly retrofitting, the ratepayers may be harmed if the benefits don't outweigh the costs. An early plant retirement may reduce the expected benefits of the capital expenditure that was to be realized over time. Ameren Missouri is not harmed by being ordered to identify avoidable costs for these plants.

Sierra Club also asks the Commission to order Ameren Missouri to file for a certificate of convenience and necessity prior to installing any new air controls in response to Environmental Protection Agency regulations. The Commission will not alter the existing threshold for seeking a CCN by ordering Ameren Missouri to apply for a certificate prior to installation of any new air controls. The Commission's rules already provide that Ameren Missouri must seek a CCN for any improvement, retrofit, or rebuild resulting in a ten percent increase in rate base.

The Commission finds that Ameren Missouri must identify avoidable capital investments when considering any early retirement of its Sioux and Labadie plants, from what is currently planned. Ameren Missouri shall include identification of avoidable capital investments with any future changes proposed for its Sioux and Labadie in its IRP filings.

Decision Summary

In making the decisions described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision. So that Ameren Missouri may expeditiously file tariff sheets as authorized below, and as contemplated by the Agreement, the Commission finds it reasonable to make this order effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. The Agreement filed on April 7, 2023, is approved. The signatories are ordered to comply with its terms. A copy of the Agreement is attached to this Report and Order.
2. Sierra Club's *Motion for Leave to Late File Initial Post-Hearing Briefs* is granted.
3. The tariff sheets submitted on August 1, 2022, by Ameren Missouri, assigned Tracking No. YE-2023-0031 are rejected.
4. Ameren Missouri is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order and the approved Stipulation and Agreement.²⁰⁹
5. Ameren Missouri must comply with all directives, conditions and other requirements as more fully described in the body of this order.

²⁰⁹ Ameren Missouri must also file a redline version of any compliance tariff sheets.

6. Within 30 days of the effective date of this Report and Order the Commission will issue an order establishing a non-residential working docket.

7. This Report and Order shall become effective June 24, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman
and Kolkmeier, CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).
Hahn, C., abstains.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Assessment Against	)	
the Public Utilities in the State of Missouri	)	<u>File No. AO-2023-0417</u>
for the Expenses of the Commission for the	)	
Fiscal Year Commencing July 1, 2023	)	

ASSESSMENT ORDER FOR FISCAL YEAR 2024

PUBLIC UTILITIES

§1. Generally

§7. Jurisdiction and powers of the State Commission

The Commission estimated the expenses to be incurred by it during the fiscal year commencing July 1, 2023. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its Office in Jefferson City on the 14th day of June, 2023.

In the Matter of the Assessment Against)
the Public Utilities in the State of Missouri)
for the Expenses of the Commission for the)
Fiscal Year Commencing July 1, 2023)

File No. AO-2023-0417

ASSESSMENT ORDER FOR FISCAL YEAR 2024

Issue Date: June 14, 2023

Effective Date: July 1, 2023

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2023. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo, and amount to \$25,857,711. Within that total, the Commission estimates the expenses directly attributable to the regulation of the six groups of public utilities: electrical, gas, heating, water, sewer and telephone, which total for all groups \$13,705,793. In addition to the separately identified costs for each utility group, the Commission estimates the amount of expenses that could not be attributed directly to any utility group of \$12,151,918.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be \$600,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2023, is estimated to be \$2,587,437. The Commission deducts these amounts and estimates its Fiscal Year 2024 Assessment to be \$22,670,274. The unexpended sum is allocated as a deduction from the estimated

expenses of each utilities group listed above, in proportion to the group's gross intrastate operating revenue as a percentage of all groups' gross intrastate operating revenue for the calendar year of 2022, as provided by law. The reimbursement from the federal gas safety program is deducted from the estimated expenses attributed to the gas utility group.

The Commission allocates to each utility group its directly attributable estimated expenses. Additional common, administrative and other costs not directly attributable to any particular utility group are assessed according to the group's proportion of the total gross intrastate operating revenue of all utilities groups. Those amounts are set out with more specificity in documents located on the Commission's web page at <http://www.psc.mo.gov>.

The Commission fixes the amount so allocated to each such group of public utilities, net of said estimated unexpended fund balance and federal reimbursement as follows:

Electric	\$ 12,472,298
Gas	\$ 5,246,210
Steam/Heating	\$ 139,524
Water & Sewer	\$ 3,610,207
<u>Telephone</u>	<u>\$ 1,202,035</u>
Total	\$ 22,670,274

The Commission allocates a proportionate share of the \$22,670,274 to each industry group as indicated above. The amount allocated to each industry group is allotted to the companies within that group. This allotment is accomplished according to the

percentage of each individual company's gross intrastate operating revenues compared to the total gross intrastate operating revenues for that group. The amount allotted to a company is the amount assessed to that company.

The Budget and Fiscal Services Department of the Commission is hereby directed to calculate the amount of such assessment against each public utility, and the Commission's Director of Administration shall render a statement of such assessment to each public utility, on or before July 1, 2023. The assessment shall be due and payable on or before July 15, 2023, or at the option of each public utility, it may be paid in equal quarterly installments, on or before July 15, 2023, October 15, 2023, January 15, 2024, and April 15, 2024. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue for deposit.

All checks shall be made payable to the "Director of Revenue, State of Missouri"; however, these checks must be sent to:

Missouri Public Service Commission
Budget and Fiscal Services Department
P.O. Box 360
Jefferson City, MO, 65102-0360

So that the assessment is effective at the beginning of Fiscal Year 2024 for the state of Missouri, the Commission finds it reasonable for this order to become effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The assessment for Fiscal Year 2024 shall be as set forth herein.
2. The Budget and Fiscal Services Department of the Commission shall calculate the amount of such assessment against each public utility.

3. On behalf of the Commission, the Commission's Director of Administration shall render a statement of such assessment to each public utility on or before July 1, 2023.

4. Each public utility shall pay its assessment as set forth herein.

5. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue for deposit.

6. This order shall become effective on July 1, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Dippell, Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Assessment Against)
the Public Utilities in the State of Missouri)
for the Expenses of the Commission for the)
Fiscal Year Commencing July 1, 2023)

File No. AO-2023-0417

NOTICE OF CORRECTION

Issue Date: June 15, 2023

On June 14, 2023, the Commission issued its *Assessment Order for Fiscal Year 2024*. The caption of the order contained an extra "0" in the file number. In order to avoid confusion, the Commission will correct the caption of the order and replace the incorrect copy with the corrected version in the electronic filing and information system (EFIS).



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union	)	
Electric Company d/b/a Ameren Missouri	)	
for a Certificate of Convenience and	)	<u>File No. EA-2023-0226</u>
Necessity to Construct, Own, Operate and	)	
Maintain a Transmission Switchyard in	)	
Callaway County, Missouri	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§42. Electric and power

The Commission approved an electric utility's application to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard in Callaway County, Missouri.

§34. Public convenience and necessity or public benefit

§42. Electric and power

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

ELECTRIC

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard in Callaway County, Missouri.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for

the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

PUBLIC UTILITIES

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§13. Acquisition of public utility property

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at the
Commission's office in
Jefferson City on the 28th day
of June, 2023.

In the Matter of the Application of Union)
Electric Company d/b/a Ameren Missouri)
for a Certificate of Convenience and)
Necessity to Construct, Own, Operate and)
Maintain a Transmission Switchyard in)
Callaway County, Missouri)

File No. EA-2023-0226

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: June 28, 2023

Effective Date: July 28, 2023

On January 13, 2023, Union Electric Company d/b/a Ameren Missouri filed an application with the Commission seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard and associated facilities in Callaway County, Missouri (referred to as the "Burns Switchyard" or "the Project"). In addition, Ameren Missouri requested a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017.

Ameren Missouri, the Midcontinent Independent System Operator, Inc. (MISO), and Show Me State Solar, LLC ("Show Me State Solar") entered into a Generator Interconnection Agreement (GIA) which will facilitate the interconnection of a 250 megawatt (MW) solar generation facility in Callaway County, Missouri. The 250 MW solar facility will be owned and operated by Show Me State Solar and is not subject to this CCN request.

To facilitate the Show Me State Solar interconnection request, Ameren Missouri will construct the Burns Switchyard. The Burns Switchyard will be constructed initially as a ring bus configuration with three-line terminal positions and will be expandable to accommodate three additional future terminal positions, should they be required. The proposed project will sit on an approximately 14-acre property. Show Me State Solar has obtained option contracts to acquire the land via two parcels. Upon closing, Show Me State Solar will combine the parcels and convey them to Ameren Missouri.

The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

On May 1, 2023, the Staff of the Commission (Staff) filed their *Staff Recommendation*. Staff recommended the Commission grant Ameren Missouri a CCN for the Project, subject to five conditions. On May 11, 2023, Ameren Missouri filed a *Response to Staff Recommendation* in which it stated that it had no objection to most of Staff's recommended conditions but questioned the language of one condition and need for another condition.

Staff and Ameren Missouri had discussions that resulted in Staff agreeing to modify one of the conditions in its May 1st *Staff Recommendation* and eliminating another condition.

The Commission may grant an electric corporation a CCN after determining that the construction and operation are either "necessary or convenient for the public service."¹ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity

¹ Section 393.170.3, RSMo.

These criteria have been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” Those factors are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.²

In its recommendation, Staff stated there is a need for the service, as the Project provides the transmission facilities necessary, under MISO's Generation Interconnection Procedure, for interconnection of the Show Me State Solar project. In addition, the requested CCN is consistent with Ameren Missouri's current Preferred Resource Plan.

Staff also stated Ameren Missouri is qualified to provide the service. Ameren Missouri has been in business for over 100 years and has been granted CCNs by Commission for many projects in the past. Ameren Missouri owns and operates a 2,970-mile transmission system that operates at voltages from 345 kV to 138 kV.³ Ameren Missouri is an affiliate of Ameren Corp., and has access to Ameren Services, which also provides expertise to Ameren Transmission Company of Illinois. Therefore, Staff concluded Ameren Missouri is qualified to construct, install, own, operate, maintain, and otherwise control and manage the Project.

Ameren Missouri will initially fund the Project using funds from its treasury. Staff noted the proposed cost of the Project is less than 1% of Ameren Missouri's capital expenditures through 2023. Thus, Staff concluded Ameren Missouri has the financial ability to construct, operate, and maintain the Project.

² See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

³ Ameren Missouri 2020 IRP Chapter 7, p. 2.

Staff stated that Ameren Missouri has a reasonable opportunity to recover the costs of the Project. Ameren Missouri will collect 90% of its transmission revenue requirement for the actual cost of the Burns Switchyard (\$9.942 million) and the other identified network upgrades (approximately \$1.1 million) from Show Me State Solar, and the remaining 10% will be allocated to the MISO Ameren Missouri Pricing Zone. Therefore, Staff concluded that the Project is economically feasible.

Staff concluded the Project is not detrimental to the public interest based upon satisfaction of the first four Tartan factors and as subject to the conditions recommended by Staff. Staff maintained that the Project promotes the public interest, due to the relationship of the Project to the interconnection of a solar project sited in Callaway County, Missouri and the location of the Project on land held by the involved parties.

The Commission has reviewed the application for the Project and the *Staff Recommendation*, and Staff's recommended conditions. The Commission concludes the factors for granting a certificate of convenience and necessity have been satisfied. Thus, the Commission will grant Ameren Missouri a CCN to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard and associated facilities in Callaway County, Missouri (the Burns Switchyard).

Ameren Missouri also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1). Ameren Missouri certified that it had no communication with the Office of the Commission regarding any substantive issue likely to be in this case during the 150 days prior to the filing of their application. The Commission finds that Ameren Missouri has demonstrated good cause for the waiver of the 60-day notice requirement.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri is granted a certificate of convenience and necessity to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard and associated facilities in Callaway County, Missouri, which has been referred to as the Burns Switchyard, subject to the following conditions:

- a. Ameren Missouri shall provide copies to Staff of final engineering drawings of the Burns Switchyard project and all connections when available.
- b. Ameren Missouri shall provide copies of all county and city permits or approvals necessary to complete the Burns Switchyard project, when available.
- c. Ameren Missouri shall implement landowner and land management policies consistent with what the Commission ordered in the Mark Twain Project, File No. EA-2017-0345, as Schedule DJB-02, Exhibit C of the Unanimous Stipulation and Agreement (attached to this Order as Attachment A), to be developed in cooperation with Staff.
- d. Until such time as initial interconnections to the three open positions included in the Burns Switchyard are made, Ameren Missouri shall provide notice and copies to Staff of any contract or agreement arising from those interconnections.

2. Ameren Missouri is granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

3. This order shall become effective on July 28, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Seyer, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	
Confluence Rivers Utility Operating	)	
Company, Inc., for Certificates of	)	
Convenience and Necessity to Provide	)	<u>File No. WA-2023-0284</u>
Water and Sewer Service in an Area of	)	
Johnson County, Missouri	)	

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§45. Water

§47. Sewers

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

PUBLIC UTILITIES

§13. Acquisition of public utility property

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for

the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§13. Acquisition of public utility property

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

RATES

§8. Reasonableness generally

§18. Consolidation or sale

§25. Former rates; extent of change

§51. Wishes of the utility or patrons

§85. Flat rates and charges

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

SEWER

§2. Certificate of convenience and necessity

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying

its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WATER

§2. Certificate of convenience and necessity

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of July, 2023.

In the Matter of the Application of	)	
Confluence Rivers Utility Operating	)	
Company, Inc., for Certificates of	)	
Convenience and Necessity to Provide	)	<u>File No. WA-2023-0284</u>
Water and Sewer Service in an Area of	)	
Johnson County, Missouri	)	

**ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 12, 2023

Effective Date: July 22, 2023

Procedural History

On March 14, 2023,¹ Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application seeking authority to acquire all or substantially all of the water and sewer systems of the currently unregulated systems of Four Seasons North MHP, LLC (Four Seasons).² Confluence Rivers requested a Certificate of Convenience and Necessity (CCN) to operate the Four Seasons' systems and provide service to the public. Confluence Rivers also requested waiver of the Commission's rule requiring a 60-day notice prior to filing an application.

¹ All dates refer to 2023.

² The Commission consolidated the water application and the sewer application on March 28.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications to intervene were received.

On June 20, the Staff of the Commission (Staff) filed its Recommendation with an attached Memorandum. Staff recommended the Commission grant Confluence Rivers the requested CCN subject to certain recommended conditions.

On June 30, Confluence Rivers filed its response stating it had no objection to Staff's recommended conditions.

No other responses or objections to the application or to Staff's recommendation were received.³ The requirement for a hearing is met when the opportunity for a hearing has been provided.⁴ No party requested a hearing. Thus, the Commission will rule on the application.

Confluence Rivers is a certificated and regulated water and sewer utility providing service to customers in Missouri. Central States Water Resources, LLC is the parent company of Confluence Rivers.

Four Seasons provides water and sewer service to approximately 35 mobile home customers in Johnson County, Missouri. The mobile home park is at full capacity and does not anticipate any future growth. Four Seasons does not currently charge for water or sewer services.

³ Commission Rule 20 CSR 4240-2.080(13).

⁴ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Discussion

Certificate of Convenience and Necessity

Section 393.170, RSMo (Supp. 2022), in subsection 2, requires Confluence Rivers to have a CCN, which is granted by the Commission, prior to providing water or sewer service in the Four Seasons service area. Subsection 393.170.3, RSMo, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁵ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁶ Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

- (1) there must be a need for the service;
- (2) the applicant must be qualified to provide the proposed service;
- (3) the applicant must have the financial ability to provide the service;
- (4) the applicant's proposal must be economically feasible; and
- (5) the service must promote the public interest.⁷

⁵ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁶ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

⁷ *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

These criteria are known as the Tartan Factors.⁸

There is a need for the service, as the customers of Four Seasons are already receiving water and sewer service, and will continue to need those services. Additionally, there is a need for maintenance and updates to the systems.⁹ Confluence Rivers is qualified to provide the service, as it is an existing water and sewer utility, subject to the Commission's jurisdiction. Confluence Rivers has the financial ability to acquire the system, as no external financing is needed and Confluence Rivers has demonstrated historically that it has adequate resources to operate the utility systems it owns. The proposed transaction is economically feasible due to its being financially feasible, as well as Confluence Rivers' ability to draw resources from its parent company. The proposal promotes the public interest, as the Four Seasons systems are in need of an operator due to the current owners' decision to sell, as well as needing maintenance and upgrades. Confluence Rivers has demonstrated the ability to provide safe and adequate service, which also supports a finding of promotion of the public interest.

Based on the application and Staff's recommendations and memorandum, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public's interest for Confluence Rivers to provide water and sewer service to the customers currently served by Four Seasons. Further, the Commission finds that Confluence Rivers possesses adequate technical, managerial, and financial capacity to operate the sewer system. Thus, the Commission will authorize the transfer of assets and grant Confluence Rivers the CCN to provide water and sewer

⁸ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

⁹ The Missouri Department of Natural Resources (DNR) has found the wastewater treatment plant to be exceeding effluent limits on multiple occasions. Upon expiration of the wastewater permit in February of 2022, Four Seasons has not been able to obtain a renewal.

service within the proposed service area, subject to the unopposed conditions described by Staff.

The Commission will also require Confluence Rivers to include information for Four Seasons customers to be able to contact Confluence Rivers' customer service department by phone, email and website. Four Seasons is not currently charging for water or sewer services; thus, all Four Seasons customers will be receiving a water and sewer bill for the first time.

Rates and Rules

Four Seasons does not presently charge for water or sewer service. Confluence Rivers proposed to charge a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service, which is consistent with the currently approved water and sewer charges in Confluence Rivers' Missing Well service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock to the Four Seasons ratepayers. The system will require investment after being acquired by Confluence Rivers, which will result in a request for a rate increase, at some point in the future, once the system upgrades have been completed. Additionally, Confluence Rivers proposed to utilize the rules governing the rendering of service currently found in Confluence Rivers' existing P.S.C. MO No. 12 tariff for water service and P.S.C. MO No. 13 tariff for sewer service, until the Commission orders new rates and rules.

The Commission finds that the proposed rates and rules of operation are just and reasonable. The Commission will direct Confluence Rivers to file new or amend its current tariffs, setting out the rates and rules for the Four Seasons customers.

Waiver of 60-day notice rule

Confluence Rivers also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Confluence Rivers verified that it had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days. The Commission finds good cause to waive the notice requirement.

So that Confluence Rivers may address the repairs and improvements as soon as possible, the Commission finds it is reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers' request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.
2. Confluence Rivers is granted authority to acquire substantially all of the water and sewer utility assets of Four Seasons, as described in the application.
3. Upon closing, Confluence Rivers is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a water and a sewer system in the areas currently served by Four Seasons, subject to the conditions and requirements contained in Staff's recommendation as modified by the Commission, as follows:
 - a) For the approved service area, Confluence Rivers shall apply a monthly charge of \$20.00 for water service, and shall adopt the rules governing water service currently found in Confluence Rivers' water tariff P.S.C. MO No. 12;
 - b) For the approved service area, Confluence Rivers shall apply a monthly charge and \$20.00 for sewer service, and shall adopt the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13;

- c) Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include a revised service area map, service area written description, rates and charges;
- d) Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;
- e) If closing on the sewer system assets does not take place within thirty days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;
- f) If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such, no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its sewer tariff, and rate and charges sheets applicable to customers in the service area in the sewer tariff;
- g) Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- h) Confluence Rivers shall adopt its current depreciation rates for the Four Seasons systems and these rates are attached as Attachment C to Staff's Memorandum;
- i) Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area;
- j) Confluence Rivers shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, and include information for customers to be able to contact Confluence Rivers' customer service department by phone, email and website, within thirty days of closing on the assets;
- k) Confluence Rivers shall provide to the Commission's Customer Experience Department (CXD) Staff an example of its actual

communication with the Four Seasons customers regarding its acquisition and operations of the water and sewer systems, and how customers may reach Confluence Rivers, including by phone, email and website, within ten days after closing on the assets;

- l) Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first three month's billing for the acquired Company within ten days of the billings;
 - m) Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within ten days after such communications and notifications;
 - n) Confluence Rivers shall include the Four Seasons water customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
 - o) Confluence Rivers shall file notice in this File No. once the Staff Recommendations above have been completed.
4. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service.
5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.
6. This order shall become effective on July 22, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge.

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	
Confluence Rivers Utility Operating	)	
Company, Inc. and Terry Jarrett, Receiver,	)	<u>File No. SA-2023-0215</u>
for Confluence Rivers to Obtain a	)	
Certificate of Convenience and Necessity	)	
and to Acquire Certain Sewer Assets	)	

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§47. Sewers

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in Ralls County, Missouri.

EVIDENCE, PRACTICE AND PROCEDURE**§23. Notice and hearing**

The requirement for a hearing is met when the opportunity for a hearing has been provided.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SEWER**§2. Obligation of the utility**

The Commission approved a sewer utility’s application to expand its service area in Ralls County, Missouri.

§2. Obligation of the utility

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Obligation of the utility

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§2. Obligation of the utility

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal

must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of July, 2023.

In the Matter of the Application of)
Confluence Rivers Utility Operating)
Company, Inc. and Terry Jarrett, Receiver,)
for Confluence Rivers to Obtain a)
Certificate of Convenience and Necessity)
and to Acquire Certain Sewer Assets)

File No. SA-2023-0215

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: July 12, 2023

Effective Date: July 22, 2023

Procedural History

On January 4, 2023,¹ Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) and Terry Jarrett, Receiver for the sewer system assets of Kenneth Jaeger, located near the Lost Valley subdivision in Ralls County, Missouri (Lost Valley System), filed an application for Confluence Rivers to acquire the unpermitted sewer system assets of Kenneth Jaeger (Confluence Rivers and Mr. Jarrett are collectively “Joint Applicants.”). The application also seeks a certificate of convenience and necessity (CCN) for Confluence Rivers to operate the system. Joint Applicants requested waiver of the Commission’s rule requiring a 60-day notice prior to filing an application.

¹ All dates refer to 2023.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications to intervene were received.

The Staff of the Commission (Staff) filed an initial recommendation on April 6. Staff's initial recommendation advised of deficiencies in the application, anticipated an amended application, and requested 45 days to review the anticipated amended application, if it should be filed.

On April 18, the Joint Applicants filed an amendment to the application. Thus, under consideration by the Commission, is the application as amended on April 18.

On June 5, Staff filed a Report and Recommendation, with an attached Memorandum, addressing the application as amended. Staff recommended the Commission grant Confluence Rivers the requested CCN, subject to certain recommended conditions.

On June 22, Confluence Rivers filed its response to Staff's recommendation. Confluence Rivers stated that with the one exception, it had no objection to Staff's proposed conditions. Confluence Rivers proposed alternate language for the condition to which it took exception - regarding installation of the subsurface irrigation system. Specifically, Confluence Rivers proposed changing the calendar timeline for installation from 18 months to an installation timeline that will be agreed to at a future date by the Missouri Department of Natural Resources. No response to the suggested correction was filed.

Besides the change proposed by Confluence Rivers, no other responses or objections to the application or to Staff's recommendation were received.² No party

² Commission Rule 20 CSR 4240-2.080(13).

requested a hearing. The requirement for a hearing is met when the opportunity for a hearing has been provided.³ Thus, the Commission will rule on the application as amended.

Confluence Rivers is a certificated and regulated water and sewer utility providing service to customers in Missouri. Central States Water Resources, LLC is the parent company of Confluence Rivers. Confluence Rivers provides water service to approximately 4,400 customers and sewer service to approximately 4,600 customers across several counties.

In 2004, Kenneth Jaeger constructed the unpermitted sewage lagoon located near the Lost Valley subdivision. In December 2021, the Missouri Attorney General's Office filed its *Petition and Motion to Appoint Receiver* in Ralls County Circuit Court, Case No. 21RL-CV00330, citing continued violation of the Missouri Clean Water Law, Sections 644.006 through 644.150, RSMo, in that Mr. Jaeger's sewage lagoon has periodically discharged partially treated sewage into a tributary of the Salt River. On May 3, 2022, a default judgement was entered in the above-mentioned case against Mr. Jaeger, and a Receiver was appointed.

The current sewer treatment system is not capable of providing safe and adequate service. Rather than repair or replacement of malfunctioning parts, a new treatment system must be installed. Lost Valley System does not currently charge for sewer services. Lost Valley System's approximate customer count and type are as follows: 35 single family residences, and two commercial customers (a convenience store and a 72-lot RV campground).

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Discussion

Certificate of Convenience and Necessity

Section 393.170, RSMo (Supp. 2022), in subsection 2, requires Confluence Rivers to have a CCN, which is granted by the Commission, prior to providing sewer service in the Lost Valley subdivision service area. Subsection 393.170.3, RSMo, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁴ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁵ Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the granting of a CCN.

The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

- (1) there must be a need for the service;
- (2) the applicant must be qualified to provide the proposed service;
- (3) the applicant must have the financial ability to provide the service;
- (4) the applicant's proposal must be economically feasible; and
- (5) the service must promote the public interest.⁶

⁴ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁵ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

⁶ *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

These criteria are known as the Tartan Factors.⁷

There is a need for the service, as the customers of Lost Valley System are already receiving sewer service and will continue to need that service. Additionally, there is a need to update the system, and Lost Valley System is currently in receivership. Confluence Rivers is qualified to provide the service, as it is an existing sewer utility subject to the Commission's jurisdiction. Confluence Rivers has the financial ability to acquire the system, as no external financing is needed and Confluence Rivers has demonstrated historically that it has adequate resources to operate utility systems it owns. The proposed transaction is economically feasible, due to it being financially feasible, as well as Confluence Rivers' ability to draw resources from its parent company. The proposal promotes the public interest, as Lost Valley System is in court appointed receivership and is in need of upgrades. Confluence Rivers has demonstrated the ability to provide safe and adequate service, which also supports a finding of promotion of the public interest.

Based on the application as amended, and Staff's recommendations, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public's interest for Confluence Rivers to provide sewer service to the customers currently served by Lost Valley System. Further, the Commission finds that Confluence Rivers possesses adequate technical, managerial, and financial capacity to operate the sewer system. Thus, the Commission will authorize the transfer of assets and grant Confluence Rivers the CCN to provide sewer service

⁷ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

within the proposed service area, subject to the unopposed conditions described by Staff, as amended by the unopposed amendment proposed by Confluence Rivers.

The Commission will also require Confluence Rivers to include information for Lost Valley System customers to be able to contact Confluence Rivers' customer service department by phone, email and website. Lost Valley System is not currently charging for sewer services; thus, all Lost Valley System customers will be receiving a sewer bill for the first time.

Rates and Rules

Lost Valley System does not presently charge for sewer service. Confluence Rivers proposes to charge a flat rate of \$16.67 per month for sewer service, which is consistent with the currently approved sewer charge in Confluence Rivers' Freeman Hills service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock. The system will require investment after being acquired by Confluence Rivers, which will result in a request for a rate increase at some point in the future once the system upgrades have been completed. Additionally, Confluence Rivers proposes to utilize the rules governing the rendering of service currently found in Confluence Rivers' existing P.S.C. MO No. 13 tariff for sewer service, until the Commission orders new rates and rules.

The Commission finds that the proposed rates and rules of operation are just and reasonable. The Commission will direct Confluence Rivers to file new or amend its current tariffs, setting out the rates and rules for Lost Valley System customers.

Waiver of 60-day notice rule

Confluence Rivers also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Confluence Rivers verified that it had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days. The Commission finds good cause to waive the notice requirement.

So that Confluence Rivers may address the repairs and improvements as soon as possible, the Commission finds it is reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers' request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.
2. Confluence Rivers is granted authority to acquire all or substantially all of the sewer utility assets of Lost Valley System as described in the application as amended.
3. Upon closing, Confluence Rivers is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system in the areas currently served by Lost Valley System, subject to the conditions and requirements contained in Staff's recommendation, as amended by Confluence Rivers, and as modified by the Commission, as follows:
 - a) For the approved service area, Confluence Rivers shall apply a monthly charge of \$16.67 for sewer service, and shall adopt the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13;
 - b) Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include the amended service area map, amended service area written description, rates and charges;

- c) Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;
- d) If closing on the sewer system assets does not take place within thirty days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty-day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;
- e) If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its sewer tariff, and rate and charges sheets applicable to customers in the service area in the sewer tariff;
- f) Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
- g) Confluence Rivers shall adopt its current depreciation rates for Lost Valley System and these rates are attached as Attachment A to Staff's Memorandum;
- h) Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area;
- i) Confluence Rivers shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, and include information for customers to be able to contact Confluence Rivers' customer service department by phone, email and website, within thirty days of closing on the assets;
- j) Confluence Rivers shall provide to the Commission's Customer Experience Department (CXD) Staff an example of its actual communication with the Lost Valley System customers regarding its acquisition and operations of the sewer system, and how customers

may reach Confluence Rivers including by phone, email and website within ten days after closing on the assets;

- k) Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first three month's billing for the acquired Company within ten days of the billings;
 - l) Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within ten days after such communications and notifications;
 - m) Confluence Rivers shall include the Lost Valley System sewer customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
 - n) Confluence Rivers shall complete installation of the subsurface irrigation system within the time permitted by any Agreement on Consent entered into with the Missouri Department of Natural Resources; and,
 - o) Confluence Rivers shall file notice in this File No. once conditions a-n above have been completed.
4. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service.
5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.
6. This order shall become effective on July 22, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge.

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	<u>File No. WC-2022-0295</u>
v.	)	
	)	
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park	)	
	)	
Respondent.	)	

ORDER GRANTING STAFF'S MOTION TO CEMPEL WITH MODIFICATIONS

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§5. Admissibility

§9. Particular kinds of evidence generally

§24. Procedures, evidence and proof

A motion to compel sought answers to data requests regarding bills and leases. The party opposing the motion to compel argued that the cost to individually access and print the requested bills would require significant time and effort. The Commission found the data requests for the bills and leases were relevant and likely to lead to admissible evidence.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of July, 2023.

The Staff of the Missouri Public Service Commission,
Complainant,
v.
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park.
Respondent.

File No. WC-2022-0295

**ORDER GRANTING STAFF'S MOTION TO COMPEL WITH
MODIFICATIONS**

Issue Date: July 12, 2023

Effective Date: July 27, 2023

On April 14, 2023, the Staff of the Commission (Staff) filed a motion to compel I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park to respond to certain data requests. I-70 Mobile City Park responded to Staff's motion on April 24, 2023. I-70 Mobile City Park asked that the Commission deny Staff's motion and requested a hearing on its motion. The Commission granted two continuances of the motion hearing based upon the parties' representation that they were engaged in settlement negotiations and needed additional time to draft a settlement agreement. Ultimately, that endeavor did not succeed and the Commission held a hearing on Staff's motion to compel on June 7, 2023.

Parties appearing before the Commission use data requests to accomplish discovery in cases like this water complaint. Prior to its motion to compel, Staff filed a motion requesting a discovery conference to address I-70 Mobile City Park's failing to

answer specific data requests and failing to update previous data request answers. That discovery conference did not resolve the issues between the parties and Staff was authorized to file a motion to compel.

Staff seeks to compel I-70 Mobile City Park to answer outstanding data requests and update answers to previous data requests. Staff originally requested the Commission issue an order compelling I-70 Mobile City Park provide full and complete responses to data requests 14, 19, 20, 42, and 44 within 10 days of a Commission order. Staff's motion asserts that I-70 Mobile City Park failed to answer specific data requests and failed to update other requests. Prior to the motion hearing, I-70 Mobile City Park adequately responded to Staff data requests 19 and 20, so those data requests are not addressed in this order.

The remaining data requests at issue are as follows:

- **Data request 14** - Asks Respondents to provide a complete explanation of the billing process for water and sewer service provided to tenants/customers at I-70 Mobile City Park. Also, that I-70 Mobile City Park provide copies of all customer bills dated January 1, 2017, to the present.
- **Data request 42** - Asks Respondents to provide copies of any water bills received by I-70 Mobile City Park from the Public Water District that are used to calculate tenant bills. Also, that I-70 Mobile City Park provide copies of all applicable bills received dated January 1, 2017, to the present.
- **Data request 44** – Asks Respondents to provide copies of all lease agreements and/or contracts between I-70 Mobile City Park and its tenants/customers currently in effect.

I-70 Mobile City Park objected to answering Staff's data requests as irrelevant, duplicative, vague, and overly burdensome. I-70 Mobile City Park stated that it had already responded to more than 50 data requests, and had provided more than 250 documents to Staff.

At the motion hearing I-70 Mobile City Park explained some of its objections further. There are 56 spots for tenants at the mobile home park. If all spots were occupied, and water and sewer were billed together, it would result in 672 bills per year; double that if water and sewer are billed separately. I-70 Mobile City Park clarified that tenants are not mailed bills, but access their individual bills electronically. I-70 Mobile City Park cannot batch print bills for particular months or years. So, for a year of bills, I-70 Mobile City Park would have to access the electronic portal and print bills individually, which would take significant time and effort for a company the size of I-70 Mobile City Park.

Commission Rule 20 CSR 4240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Missouri Rule of Civil Procedure 56.01(b) states that parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. Parties may inquire into any matter that is reasonably calculated to lead to admissible evidence.¹

An examination of Staff's outstanding data requests shows that they are necessary to determine whether I-70 Mobile City Park is providing water and sewer services that would require Commission regulation, and also necessary to answer I-70 Mobile City Park's summary determination motion. Staff's motion demonstrates that its data requests

¹ *State ex. rel. Martel v. Gallagher*, 797 S.W.2d 730 (Mo. App. E.D. 1990).

are relevant and likely to lead to admissible evidence. Additionally, Staff has attempted to make it easier for I-70 Mobile City Park to provide discovery. Staff has offered, as an alternative to providing all bills from January 1, 2017, to present, that I-70 Mobile City Park provide copies of all customer bills from July 1, 2022, to present.

Missouri Rule of Civil Procedure 56.01(b) also provides that discovery be proportional to the needs of the case. This necessitates an inquiry of what discovery is sufficient for what purpose. Staff is seeking to determine how I-70 Mobile City Park customers are billed for utility service over time. Staff also needs to be able to relate that information to particular tenants and across a number of tenants. The Commission believes this can be accomplished by scaling Staff's request so that it's easier for I-70 Mobile City Park to comply with, but still sufficient for Staff's purpose.

During the motion hearing, the Regulatory Law Judge discussed I-70 Mobile City Park providing a representative sample of bills and leases across customers and over time. To date, I-70 Mobile City Park has only provided sample bills and leases not associated with a particular tenant or unit. Staff stated that April 26, 2023, was an ideal date for the leases it requested. Accordingly, the Commission will order that I-70 Mobile City Park provide Staff with a copy of all leases or rental agreements for all tenants of the mobile home park in effect during April 26, 2023, one year of utility bills for five customers that resided in the mobile home park for the period of June 2022 through June 2023, all water and sewer bills from June 2022 through June 2023 from whatever entities bill I-70 Mobile City Park for water and sewer service (i.e. – Bates City or a public water district), and 100 randomly selected utility bills for tenants between June 2022 and June 2023. I-70 Mobile City Park shall also provide a complete explanation of the billing process for

water and sewer service provided to tenants/customers at I-70 Mobile City Park. All utility bills provided to Staff must contain the customer and unit/pad identification. Staff shall take sufficient precautions to ensure that specifically identifiable customer information remain confidential.

The Commission will order I-70 Mobile City Park to answer outstanding data requests as provided in the body of this order. Upon receipt of I-70 Mobile City Park's discovery information, Staff shall inform the Commission whether the information provided is sufficient so the Commission may set a date by which Staff must answer I-70 Mobile City Park's outstanding summary determination motion. The Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Staff's motion to compel is granted in part. Within ten days of the effective date of this order, I-70 Mobile City Park must answer Staff's data requests as set forth in the body of this order and update its answers to previous data requests.
2. All other requests for relief are denied.
3. This order shall be effective July 27, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Confluence Rivers Utility	)	
Operating Company, Inc.'s Request for	)	
Authority to Implement General Rate	)	<u>File No. WR-2023-0006</u>
Increase for Water Service and Sewer	)	
Service Provided in Missouri Service	)	
Areas	)	

ORDER DENYING IN PART AND GRANTING IN PART STAFF'S REQUEST TO COMPEL DISCOVERY ANSWERS

EVIDENCE, PRACTICE AND PROCEDURE

§6. Weight, effect and sufficiency

The Commission found that statements made to the Texas Commission, the approval of funding of the utility, the allocation of costs, and the setting executive salary levels indicate a level of control by a shareholder beyond that of a mere investor, and more indicative of active management.

§29. Discovery

The Commission found that its rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. Particular to the Commission, parties may use data requests as a means of discovery.

§29. Discovery

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence.

§29. Discovery

The Commission determined that Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance. Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable. In determining legal relevance, the court, or administrative agency, must weigh "the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect."

§29. Discovery

In denying a motion to compel, the Commission found that the moving party failed in its burden to show that the probative value of the exit interviews outweighs concerns of potential confusion of the issues, undue delay, and waste of time. The Commission further found that the request for exit interviews is not reasonably calculated to lead to the discovery of admissible evidence.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day of
July, 2023.

In the Matter of Confluence Rivers Utility)
Operating Company, Inc.'s Request for)
Authority to Implement a General Rate)
Increase for Water Service and Sewer)
Service Provided in Missouri Service)
Areas)

File No. WR-2023-0006
Tracking Nos. YW-2023-0113
and YS-2023-0114

**ORDER DENYING IN PART AND GRANTING IN PART STAFF'S
REQUEST TO COMPEL DISCOVERY ANSWERS**

Issue Date: July 12, 2023

Effective Date: July 12, 2023

On June 26, 2023,¹ the Staff of the Commission (Staff) filed its *Motion to Compel* (Motion).² On July 6, 2023, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or "the Company") filed its *Response to Staff's Motion to Compel* (Response). At issue are two data requests (DRs) submitted by Staff, DR 425 related to exit interviews and DR 231.1 related to board minutes.

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.³ Particular to the Commission, parties may use DRs as a means of discovery.⁴

¹ All dates refer to 2023 unless otherwise indicated.

² The discovery issues were raised in a discovery conference held on June 14, thus meeting the discovery motion filing requirements of Commission Rule 20 CSR 4240-2.090(8).

³ Commission Rule 20 CSR 4240-2.090(1).

⁴ Commission Rule 20 CSR 4240-2.090(2).

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence. Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance.⁵ Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.⁶ In determining legal relevance, the court, or administrative agency, must weigh "the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect."⁷ Supreme Court Rule 56.01 also provides that the party seeking discovery has the burden of establishing relevance.

The Company's Response argued that discovery should be limited to documents and information germane to the rate case, such that Staff should not be allowed to use the rate case as a vehicle to obtain discovery on issues and affiliated companies that have no impact on determining the utility's cost of service and total revenue authorized – two examples of matters at issue in a general rate case.

DR 425 – Exit Interviews

At the June 14 discovery conference, Confluence agreed to provide requested information regarding former employees, except for exit interview questions and former employees' responses. Staff argued that the exit interviews are relevant because

⁵ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁶ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁷ *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

employee turnover may cost ratepayers money. Staff's Motion also argued the exit interviews may indicate other problems, issues of leadership style, or concerns with certain human resources benchmarks. Staff's Motion stated that Confluence Rivers conducted fewer than 16 exit interviews and they are available in electronic format and are thus easily accessed and not overly burdensome to produce.

The Response noted that of the 16 employees who left the Company in the subject time period, exit interviews did not commence until October 2020 – effectively cutting off the first year of the subject time period. The Commission is unsure if this statement means there are less than 16 exit interviews.

The Response argued that the nature of the information requested by Staff must be considered by the Commission. Confluence Rivers stated that exit interview responses need to be open and honest for them to be of assistance to the Company. However, the Response argued that requiring the exit interviews be released to a state organization will not encourage open and honest communications. The Company added that the context of the exit interviews, which will be important to understanding their value, is something an outside viewer will not have.

The Response also argued that the low turnover number of 16 employees controverts Staff's stated reason to seek the exit interviews – to uncover unsound management practices, inefficiencies, or lack of controls or policies among other proffered rationales including attempting to uncover an institutional culture which may lead to litigation. The Response stated that the 16 positions identified do not exhibit an undue amount of turnover - especially given that the subject time period included the pandemic.

The Response added that the exit interviews are irrelevant as they are, at best, only tangentially related to the establishment of the revenue requirement and rate design in this case. Confluence Rivers added that even if the Commission finds Staff's stated reasons are related to the establishment of the revenue requirement and rate design, the generic statement made by Staff provides no basis to think that exit interviews would provide any light on these issues beyond that found in the other materials available to Staff.

The Company stated that evidence of litigation would be found elsewhere, not from exit interviews. Confluence Rivers concluded that even if relevant, given the nature of the information, requiring the discovery of these exit interviews is not proportional to the needs of the case considering the totality of the circumstances. This information should be held close by the employer in order to encourage open and honest responses from employees in the future.

The Commission finds that Staff has failed in its burden to show that the probative value of the exit interviews outweighs concerns of potential confusion of the issues, undue delay, and waste of time. The Commission finds that Staff's request for exit interviews is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Commission will deny Staff's motion with regard to the answers to DR 425.

DR 231.1 – Board Minutes

The data request is marked as confidential, thus the Commission will speak in general terms in order to maintain confidentiality of the information.⁸

⁸ Information not marked as confidential in Confluence Rivers' Response will be treated as public information.

Confluence Rivers' Response defines several of the corporations involved, which will help inform the discussion.

- Confluence Rivers is a water and sewer corporation. Confluence Rivers' statement that it has no board of directors reflects the fact that it has one director.
- CSWR, LLC is the parent of numerous state utility operating companies. No board of directors has been created by its operating agreement. The Commission infers this description to mean that CSWR, LLC has no board of directors.
- Central States Water Resources, Inc. is a Missouri general business corporation that acts as the "manager" of CSWR, LLC. Central States Water Resources, Inc. has a board of directors, but has no ownership interest in any of the CSWR, LLC subsidiaries.
- US Water Systems, LLC (US Water) is a private equity company which acquired CSWR, LLC and all of its wholly-owned subsidiaries in November 2018. Central States Water Resources, Inc. was CSWR's parent company before it was acquired by US Water.⁹

This discovery concern arose from a document found by Staff that references the acronym CSWR and appears to be meeting minutes from a board meeting held in 2021 (the 2021 Meeting). The document references Josiah Cox as a board member. Staff requested all documents related to the 2021 Meeting, asserting that it appears to be the

⁹ Motion to Compel, filed June 26, 2023, para. 12.

minutes from a CSWR board meeting. Confluence Rivers objected, but answered that it did not have access to any such records. Confluence Rivers initially informed Staff that it believed the document was meeting minutes from US Water, and that mention of Josiah Cox as a board member was in error.

Confluence Rivers updated its response to reflect its belief that the 2021 Meeting minutes appears to misuse the acronym CSWR as an abbreviation for Central States Water Resources, Inc. and it is not as a reference to CSWR, LLC. In support, the Company cites Josiah Cox being a board member, similar board meeting timing, and similar personnel in attendance to support the argument that the 2021 Meeting minutes relate to Central States Water Resources, Inc., not CSWR, LLC. Nevertheless, the Company states that is unable to produce the documents sought whether they concern US Water or Central States Water Resources, Inc.

Staff's Motion also argued that CSWR stated to the Texas Public Utility Commission (the Texas Commission) that since US Water's acquisition of CSWR (which includes CSWR's wholly-owned subsidiaries, such as Confluence Rivers), US Water's "financial statements contain activity for the acquired business." Staff argued that US Water's financial statements likely include aspects of Missouri business since Confluence Rivers is part of the acquired businesses being discussed.

Staff stated that many costs that are approved for funding at the US Water level relate to CSWR and the individual utility operating companies such as Confluence Rivers. In addition, costs incurred at the CSWR level are allocated to the individual utility operating companies including Confluence Rivers. Staff noted that the Company

additionally stated to the Texas Commission that US Water is committed to investing the necessary capital in the acquisition and improvement of CSWR's Missouri operations.

Staff argued that such board decisions affect the expenses and costs that the regulated entity and ultimately, Confluence Rivers' ratepayers, will bear. Staff argued the information is necessary to verify the legitimacy of the expenses and costs, including capital, that Confluence Rivers seeks to recover from ratepayers, and thus, it is a valid area of discovery.

Staff argued that as an investor of CSWR, LLC and its subsidiaries, US Water is likely a water corporation as defined in § 386.020(59), RSMo, and thus comes within the Commission's jurisdiction. Confluence Rivers argued that it is unaware of any authority for the proposition that any investor in a corporate structure containing a Missouri water corporation is itself a Missouri water corporation.

Staff further argued that US Water is making decisions about Confluence executives' salaries.¹⁰ While the underlying salary information is confidential, the Commission will note the salient phrase pointed out by Staff's Motion that the executive salary decisions were "per board". Staff argued that because the Company claims that neither it nor CSWR have a board of directors, that this necessarily implies decision making regarding Confluence Rivers by the US Water board of directors or the Central States Water Resources, Inc. board of directors. Confluence Rivers' Response did not address the salary issue.

Although there is no authority cited for a general investor to be treated as a water corporation, the statements made to the Texas Commission, the approval of funding of

¹⁰ Motion to Compel, filed June 26, 2023, para. 15.

Confluence Rivers, the allocation of costs, and the setting executive salary levels indicate a level of control by US Water and/or Central States Water Resources, Inc., beyond a mere investor, and more indicative of active management.

The Commission finds that Staff's request for documentation related to the 2021 Meeting – whether it was a board meeting of US Water or Central States Water Resources, Inc. - meets the requirement of being reasonably calculated to lead to admissible evidence. The Commission also finds that these meeting materials are in Confluence Rivers' possession, custody, or control. Therefore, the Commission will grant Staff's motion with regard to the answers to DR 231.1.

THE COMMISSION ORDERS THAT:

1. The request to compel answers to discovery is granted, in part, and denied, in part.
2. No later than July 19, 2023, Confluence Rivers shall respond to DR 231.1.
3. Staff's request to compel answers to DR 425 is denied.
4. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Relay Missouri Advisory)
Committee's Appointment of a New Member) **File No. TO-2024-0003**

**ORDER APPOINTING A NEW MEMBER AD A NEW CHAIR OF THE
RELAY MISSOURI ADVISORY COMMITTEE**

TELECOMMUNICATIONS

§1. Generally

§7. Jurisdiction and powers of the State Commission

The Commission approved the appointment of a new member and approved a new Chair of the Relay Missouri Advisory Committee.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day of
July, 2023.

In the Matter of the Relay Missouri Advisory)
Committee's Appointment of a New Member) **File No. TO-2024-0003**

**ORDER APPOINTING A NEW MEMBER AND A NEW CHAIR OF THE
RELAY MISSOURI ADVISORY COMMITTEE**

Issue Date: July 20, 2023

Effective Date: July 30, 2023

On July 10, 2023, the Staff of the Commission filed a motion asking the Commission to approve the appointment of a new member and to approve a new Chair of the Relay Missouri Advisory Committee.

The Relay Missouri Advisory Committee has voted to approve and Staff asks the Commission to appoint Kathleen Sinks as the representative for the Speech Pathologist or Audiologist position as a term-limited member. Term-limited members serve for a three-year term. The Commission will make the requested appointment.

Additionally, Staff requests that the Commission approve the appointment of James Frost as the Chair of the Relay Missouri Advisory Committee. James Frost was appointed for a three-year term for the deaf position to the Relay Missouri Advisory Committee on May 21, 2023. The Relay Missouri Advisory Committee has voted to appoint James Frost as the Chair of the Committee. The Commission will approve the requested appointment.

So that the appointments will take effect as soon as possible, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Kathleen Sinks is appointed to the Relay Missouri Advisory Committee as a term-limited representative for the Speech Pathologist or Audiologist position.
2. James Frost is appointed as Chair of the Relay Missouri Advisory Committee.
3. This order shall become effective on July 30, 2023.
4. This file shall be closed July 31, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

Structural Glass Systems, Inc.,	)	
	)	
Complainant	)	
	)	<u>File No. GC-2023-0143</u>
v.	)	
	)	
Spire Missouri, Inc. d/b/a Spire,	)	
	)	
Respondent	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§32. Confidential evidence

The Commission found that customer-specific information is confidential; however, the Commission may waive this provision for good cause. Good cause exists to waive confidentiality as to a utility's bills and gas usage because the Commission would be unable to write findings of fact or a decision that did not use some customer-specific information.

GAS

§7. Jurisdiction and powers of the State Commission

The Commission found that a person may file a complaint against a utility which is regulated by this Commission. The complaint shall set forth allegations of violations of any law, rule or order of the Commission.

§33. Billing practices

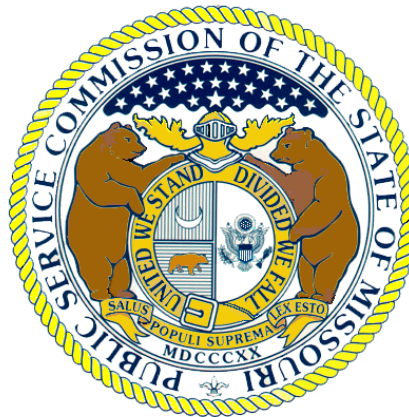
The Commission found that for all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period.

§33. Billing practices

The Commission found that language in the tariff regarding undercharges defines a period beginning on the date of discovery, inquiry, or actual notification of the company, and extends backwards in time for up to 60 months.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 20th day of July, 2023.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Structural Glass Systems, Inc.,

Complainant

v.

Spire Missouri, Inc. d/b/a Spire,

Respondent

File No. GC-2023-0143

REPORT AND ORDER

Issue Date: July 20, 2023**Effective Date:** August 19, 2023

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APPEARANCES**Appearing For Structural Glass Systems, Inc.:**

Mark E. Meyer, 2528 SW Wintercreek Drive, Lee's Summit, Missouri, 64081

Appearing for Spire Missouri, Inc. d/b/a Spire:

J. Antonio Arias, 700 Market Street, 6th Floor, St. Louis, Missouri, 63101

Appearing for the Staff of the Missouri Public Service Commission:

Ron Irving, Staff Counsel, Governor Office Building, 200 Madison Street,
Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: Ross Keeling

REPORT AND ORDER

Procedural History

On October 25, 2022, Structural Glass Systems, Inc. (SGS) filed this complaint alleging that Spire Missouri, Inc. d/b/a Spire charged it the amount of \$7,822.66 due to an undercharge for natural gas, allegedly provided to SGS between November 24, 2021 and April 12, 2022. SGS claims that this undercharge resulted solely from Spire's negligence because Spire installed a meter with an improperly configured automatic index and pressure corrector (PTZ corrector). This resulted in the meter registering six digits of usage while transmitting five digits of usage to Spire for billing. SGS asserts that it cannot be billed or assessed for the undercharge and that it suffered consequential damages due to Spire's negligence, and that Spire violated a statute, tariff or Commission regulation or order.¹

On November 23, 2022 Spire filed its motion to dismiss the complaint, in which it argued that SGS had failed to state a claim on which relief can be granted under the Commission's formal complaint rules, in that (1) Complainant has not alleged any violation of law, rule, or Commission-approved tariff, and (2) Complainant has also not stated sufficient facts to support a finding of negligence or any consequential damages.

On December 19, 2023, Spire filed its answer to SGS's complaint, denying that SGS adequately pled the elements of negligence, admitting that the configuration of its PTZ corrector caused an undercharge to SGS, and explaining that its rebilling for natural gas was required by Commission Rule 20 CSR 4240-13.025, and in accordance with its tariff.

¹ Complaint, pp. 1-2.

On May 3, 2023, Spire filed a stipulation of undisputed facts bearing the signatures of counsel for Spire and SGS. In that filing, Spire and SGS stipulate that: “An incorrect PTZ corrector configuration caused Complainant’s gas meter to register six digits of usage, but only transmit five digits of usage to Respondent’s billing system for the period of November 24, 2021 to April 12, 2022.”

On May 5, 2023, the parties filed a list of issues, witnesses, exhibits, and position statements, presenting the following issues:

- A. From the period of November 24, 2021 to April 12, 2022, did Complainant use the amount of natural gas that Respondent rebilled Complainant for in the amount of \$7,822.66?
- B. To the extent the answers to Issue A is yes, did Respondent violate any law or any commission rule, order or decision?

At the evidentiary hearing on May 10, 2023, the Commission heard the testimony of five witnesses and received 22 exhibits into the record. SGS filed its post-hearing brief on May 31, 2023. Staff, Spire, and the Office of the Public Counsel (OPC) filed post-hearing briefs on June 7, 2023.

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to SGS’s bills and gas usage because the Commission would be unable to write findings of fact or a decision that did not use some of its customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission’s decision.

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Spire is a public utility that renders gas services to customers in Missouri.²
2. Spire provided and continues to provide gas service to the Complainant, at the address at issue in this case, 9700 East 56th Street C, Raytown, Missouri.³

Billing

3. SGS began large general commercial service on November 24, 2021, and received and paid bills for service in December 2021, and in January, February, March, and April, 2022.⁴
4. In October of 2021, Spire installed a Romet rotary gas meter at SGS's warehouse with a PTZ electronic index and pressure corrector connected to it.⁵

² Answer, para. 4 (filed December 19, 2022).

³ Transcript, p. 70:1-4; Exhibits 1-5.

⁴ Exhibit 200C, Staff Report and Recommendation, p. 2.

⁵ Transcript, p. 76:12 – 77:9.

5. Spire discovered that the PTZ corrector configuration was incorrectly set on SGS's meter in January of 2022. The incorrect configuration caused the meter's usage readings to be conveyed to Spire's billing department with one digit missing.⁶

6. On May 2, 2022, SGS received a letter from Spire indicating that the meter was "faulty". The letter stated that SGS would receive a billing adjustment on the next bill and that Spire would be offering the customer the ability to make payment arrangements to spread out the additional costs over time. The letter did not provide any details on the specific problems associated with the billing.⁷

7. SGS received a bill from Spire dated April 12, 2022, showing charges for the service period from March 11, 2022, to April 12, 2022. The April 12, 2022 statement indicates the present reading of usage by SGS at that time to be 702 hundred cubic feet (CCFs).⁸

8. SGS received a bill from Spire dated May 11, 2022, showing charges for the service period from April 13, 2022 to May 10, 2022, and including an additional charge of \$6,801.60 for bill correction during the period of November 24, 2021 to April 12, 2022.⁹ When added to the present charges for the month the total bill amounted to \$7,168.65.¹⁰ The May 11, 2022 statement indicates the present reading of usage by SGS at that time to be 7189 CCFs.¹¹

9. SGS received a bill from Spire dated September 29, 2022, showing an

⁶ Exhibit 200C, Staff Report and Recommendation, p. 2.

⁷ Exhibit 200C, Staff Report and Recommendation, pp. 3-4.

⁸ Exhibit 5, Spire Statement April 12, 2022.

⁹ Exhibit. 6, Spire Statement May 11, 2022; Transcript, p. 41:15-17.

¹⁰ Exhibit. 6, Spire Statement May 11, 2022; Exhibit 200C, Staff Report and Recommendation, p. 2.

¹¹ Exhibit. 6, Spire Statement May 11, 2022.

amount due of \$7,822.66. This bill includes the May 11, 2023 bill, plus the applicable charges accrued from May 10, 2022 through September 29, 2022.¹²

10. Spire continued to rebill SGS for the entire \$6,801.60 that it under billed SGS for the service period from November 24, 2021 to April 21, 2022.¹³

Metering

11. The meter installed at SGS's service address was a Romet rotary meter with a PTZ electronic index and pressure corrector connected to it.¹⁴ The meter installed at SGS's service address registers usage in six digits.¹⁵

12. Readings taken from the meter installed at SGS's facility begin at zero CCF usage, when the meter was new and newly installed in November of 2021, and proceed to 7022 CCF on April 12, 2022, which is the end of the period in question.¹⁶

13. A PTZ corrector is an electronic index that goes on the meter that also has a pressure and temperature sensor. It is continuously measuring the gas flowing through the meter and correcting it in real time for both pressure and temperature.¹⁷ The PTZ corrector collects information from the movement of the meter.¹⁸ On a monthly basis, the PTZ corrector sends the current readings through a communication module to Spire's billing system.¹⁹

14. Prior to installing the PTZ technology, Spire used a billing system that recorded usage using mechanical indexes on the meters. Information from the meter

¹² Exhibit 10, Spire Statement September 29, 2022; See Exhibits 6, 7, 8, & 9.

¹³ Transcript, pp. 40:12-22; 41:13-18; 58: 20-25.

¹⁴ Transcript, p. 77:5-9.

¹⁵ Transcript, p. 77:13-19.

¹⁶ Transcript, p. 67:2-22.

¹⁷ Transcript, p. 63:11-16.

¹⁸ Transcript, pp. 77:13 – 78:1.

¹⁹ Transcript, p. 63:20-25.

required a configuration within the billing system to automatically disregard the first digit of the reading sent by the meter because the meter provided more detail than was necessary for billing purposes.²⁰

15. The PTZ corrector was a new system, and the errors in billing were caused by a legacy issue in Spire's billing system.²¹

16. The PTZ corrector does not require any correction to provide accurate readings to the billing system, so once PTZ technology was in use it was no longer necessary to correct the digital read provided by the PTZ corrector. However, the billing system continued to disregard the first digit of information after the PTZ corrector was put into use, causing the reading to be moved one digit to the left.²²

17. On August 15, 2022, Spire conducted an on-site differential pressure test on the meter, showing that the meter is accurate at three different flow rates.²³ The meter registered natural gas usage properly and the meter reads that were taken directly from the meter were accurate.²⁴

Usage Reports

18. In addition to its billing system, Spire maintains records of usage in a separate report called an "Out Of Route Reads Report."²⁵

19. The Out Of Route Reads Report shows a record of readings collected over time for a particular meter.²⁶ The Out Of Route Reads Report shows the raw read of the

²⁰ Transcript, p. 64:6-11.

²¹ Transcript, pp. 72:23 – 73:9.

²² Transcript, p. 64:12-16.

²³ Transcript, p. 75:19 – 76:2; Exhibit 201, Differential Meter Test.

²⁴ Transcript, p. 65:4-9.

²⁵ Exhibit 102, Out of Route Reads Report; Transcript, p. 65:13-23.

²⁶ Transcript, p. 66:3-4.

meter. The raw read shows what the meter was registering at the customer's service address. The Out Of Route Reads Report also shows what the read should be if it was a four-dial meter, a five-dial meter, a six-dial meter, and what the read should be for a PTZ corrector.²⁷

20. The Out Of Route Reads Report for the meter at SGS's billing address shows that on December 10, 2021, the raw read was 0000000171, the 6 dial read lists a value of 000017, and the PTZ corrector column shows a read of 000171.²⁸

21. The Out Of Route Reads Report for the meter at SGS's billing address shows that on April 12, 2022, the raw read was 0000007022, the 6 dial read was 000702, and the PTZ corrector read was 007022.²⁹

Expected Usage

22. The total square footage of SGS's facility at the service address was 15,204 Square Feet.³⁰

23. The expectation for the usage in warehouses for the purposes of heat is at least 250 CCF for every 3,000 square feet of warehouse space, per month.³¹

24. The estimated usage for heating SGS's facility would be at least 1500 CCF.³²

25. When SGS initially applied for natural gas service, Spire was supplied with a list of equipment that totaled nearly 1.6 million BTUs, requiring 2 lbs. of delivery

²⁷ Transcript p. 66:1-17; Exhibit 102, Out of Route Reads Report.

²⁸ Exhibit 102, Out of Route Reads Report.

²⁹ Exhibit 102, Out of Route Reads Report.

³⁰ Transcript, p. 70:1-8.

³¹ Transcript, p. 71:9-14.

³² Transcript, p. 71:15-18.

pressure, an estimate that would likely yield a bill in excess of 2,000 CCF of usage on a normal winter month.³³

26. The natural gas appliances in SGS's facility were two Reznor heaters rated at 250,000 BTUs each.³⁴

27. The natural gas appliances in SGS's facility were too small for the facility.³⁵

28. A heating unit will produce heated air to fill a volume of space to the temperature to which the thermostat is set. If the heating equipment installed is insufficient to move enough heat into a space to reach the desired temperature a thermostat is set to, the equipment will just run more, and run inefficiently, and burn more gas.³⁶

29. Gas Usage at SGS's facility was measured at 1995 CCFs for the period of January 12, 2022 (9:34:36 AM) to February 10, 2022 (1:04:06 AM).³⁷

30. Gas usage at SGS's facility was measured at 1523 CCFs for the period of January 10, 2023 to February 7, 2023.³⁸

Conclusions of Law

A. Spire is a Missouri corporation and a "gas corporation" and "public utility" as defined by Section 386.020, RSMo, and is authorized to provide gas service to portions of Missouri.

B. Section 386.390.1, RSMo, states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or

³³ Transcript, p. 81:10-22.

³⁴ Transcript, p. 82:8-14.

³⁵ Transcript, pp. 81:10 – 83:17

³⁶ Transcript, p. 83:4-17.

³⁷ Exhibit 102, Out of Route Reads Report.

³⁸ Exhibit 101, p. 19.

order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. Commission Rule 20 CSR 4240-13.020(2), requires that each billing statement rendered by a utility shall be computed on the actual usage during the billing period.

D. Commission Rule 20 CSR 4240-13.025(1) provides that for all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period.

E. Spire's Commission-approved tariff, P.S.C. Mo. No. 9 Original Sheet No. R-8.1, defines the period during which Spire may make adjustments for a period of undercharge to be limited to a 60 billing periods prior to and including the date of discovery, inquiry or actual notification of the company. The relevant portion reads as follows:

Customers Other Than Residential:

In the event of an undercharge: An adjustment shall be made for the entire period that the undercharge existed not to exceed sixty consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

F. A tariff has the same force and effect as a statute, and it becomes law.³⁹

³⁹ *State ex rel Missouri Gas Energy v. Public Service Com'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).

G. SGS, as the complainant, bears the burden of proof to show by a preponderance of evidence that Spire has violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.⁴⁰

H. The determination of witness credibility is left to the Commission, "which is free to believe none, part, or all of the testimony."⁴¹

Decision

Issue A – From the period of November 24, 2021 to April 12, 2022, did Complainant use the amount of natural gas that Respondent rebilled Complainant for in the amount of \$7,822.66?

Prior to the evidentiary hearing in this matter the parties stipulated that an incorrect PTZ corrector configuration caused Complainant's gas meter to register six digits of usage, but only transmit five digits of usage to Respondent's billing system for the period of November 24, 2021 to April 12, 2022. With that decided, the remaining issue is to determine which digit was omitted for billing purposes.

In its order denying Spire's motion to dismiss, the Commission determined that SGS's complaint sufficiently states a cause of action that can be addressed by the Commission because it alleges that Spire billed SGS for gas service that it did not provide, and that cannot be billed or assessed to it. This matter went to an evidentiary hearing for a determination of whether that allegation is true. SGS presented no evidence showing that either the meter or the PTZ corrector were incorrect or inaccurate.

⁴⁰ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant."

⁴¹ In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission, 509 S.W.3d 757, ~~763~~ **764** (Mo. App. W.D. 2016).

Spire's witness, Mr. James Rieske, testified that the PTZ corrector was a new system, and that the errors in billing were caused by a legacy issue in its billing system. Mr. Rieske explained that the system used to process the data sent by the PTZ connector was configured to disregard the last digit submitted by the device, moving the decimal one place to the left, and showing a value only one tenth the amount actually registered by the meter. This occurred because the system was still configured to accommodate the previous reporting system, which disregarded the last digit of readings received from the meter.

The evidence shows that this is true. Spire maintains a parallel record, the "Out Of Route Reads Report," that shows what the actual reading of the meter was on certain dates during the time in question, called the "raw read." This record also indicates what the reading should be in the billing system for the differently formatted meters, and for meters with an installed PTZ corrector. Those records show that the readings taken from the meter installed at SGS's facility begin at zero CCF usage, when the meter was new and newly installed in November of 2021, and proceed to 7022 CCF on April 12, 2022, which is the end of the period in question. This confirms the total usage claimed by Spire during the period in question.

The Out Of Route Reads Report also supports Spire's claim that, during the time in question, its billing system disregarded the first digit of its usage readings, resulting in billing for only one tenth of SGS's usage. The Out Of Route Reads Report shows that, for each timestamped reading recorded, the raw read and the readings for meters with an installed PTZ corrector show equivalent values. But the values indicated for six-digit meters show a value one tenth of that amount because the first number in a six-digit meter

reading is disregarded by the system, shifting the decimal point to the left. In his testimony, Mr. Rieske explained that, in this case, the data received from the PTZ corrector was treated as though it was a six-digit meter reading, and the first digit was improperly disregarded in the billing record. This caused SGS to be under billed for its gas usage from November 24, 2021 to April 12, 2022.

The full amount of under billing is \$6,801.60. Spire's statement dated September 29, 2022, shows an amount due of \$7,822.66. This bill includes the May 11, 2023 bill, plus the applicable charges accrued from May 10, 2022 through September 29, 2022. SGS offered no evidence of its own refuting Spire's factual evidence.

Consistency of usage

At the evidentiary hearing, SGS argued that the volume of gas billed to its facility was inconsistent with the size of the facility and the gas powered equipment installed. Spire's witness, Mr. Rieske, testified that the size of SGS's facility was consistent with the gas volume it was billed for, and that using heating equipment that is rated for lower BTU production does not reduce overall gas usage. Heating a warehouse with gas typically requires at least 250 CCF for every 3,000 square feet of warehouse space. SGS's facility is 15,204 square feet, which according to Mr. Resike requires about 1,500 CCF of gas to heat in a normal winter month. Records of usage during the winter months of both 2022 and 2023 are consistent with normal usage for a facility of that size. For example, usage in January 12 to February 10, 2022 was 1995 CCF, where usage from January 10 to February 7, 2022 was 1523 CCF.

Mr. Rieske also testified about the size and adequacy of the equipment at SGS's facility, which is smaller than typically required for a facility of that size. With its initial

application for gas service, SGS provided a list of equipment to Spire totaling nearly 1.6 million BTUs, requiring 2 lbs. of delivery pressure. The SGS facility had two gas heaters totaling 500,000 BTUs. According to Mr. Rieske, SGS's heaters were too small for the facility. The amount of gas required to heat a given space depends on how often the heating units run. He stated that smaller heating units do not conserve energy, but require the heaters to run longer and use more fuel to heat the same space. This is inefficient and increases the gas usage and the cost of heating. As a result, the smaller equipment at the SGS facility did not result in any savings, and the gas usage was consistent with the size of the facility. SGS did not present evidence rebutting Spire's claims regarding its records or claims regarding the consistency of usage with the size of its facility.

SGS has failed to produce evidence sufficient to satisfy its burden to demonstrate that from the period of November 24, 2021 to April 12, 2022, SGS did not use the amount of natural gas that Spire rebilled it for in the amount of \$7,822.66.

Issue B – To the extent the answers to Issue A is yes, did Respondent violate any law or any Commission rule, order or decision?

Recovery Authorized by Tariff

In their Briefs, both SGS and OPC argued that Spire discovered the under billing issue in January of 2022, but did not address it until May of 2022. SGS and OPC argue that the applicable tariff provides that billing for under billed usage may only run through the date that it is "discovered." OPC argues that Spire can only rebill SGS for under charged amounts from November 2021 through January, 2022 because SGS did not inform customers of the undercharge issue for five months, during which Spire knew about the misconfigured PTZ corrector but chose not to fix. And that Spire incurred most

of the undercharged amount without any communication or warning to SGS, preventing SGS from mitigation efforts that could have reduced its bills.

The applicable tariff is P.S.C. MO. No. 9 Original Sheet No. R-8.1. The relevant portion reads as follows:

Customers Other Than Residential:

In the event of an undercharge: An adjustment shall be made for the entire period that the undercharge existed not to exceed sixty consecutive billing periods, calculated from the date of discovery, inquiry or actual notification of the Company, whichever was first.

In their post hearing briefs, both Spire and Staff state that Spire's Commission approved Tariff Sheet No.R-8.1, allows Spire to make billing adjustments for over or under billing situations. Neither Spire nor Staff address the limits of the period during which Spire may recover, as it is defined in the tariff.

The Commission finds that the tariff language defines a period beginning on the date of discovery, inquiry, or actual notification of the company, and extends backwards in time for up to 60 months. Here, Spire discovered the misconfigured PTZ corrector in January of 2022. The Commission finds that Spire is in violation of its tariff because it rebilled SGS for a period that is not provided for in its tariff. Thus, the Commission will limit Spire's recovery to under billed amounts from November 2021, through its February 9, 2022 billing.

THE COMMISSION ORDERS THAT:

1. SGS's claim that it did not use the amount of natural gas from November 24, 2021 to April 12, 2022, that Spire rebilled it for in the amount of \$7,822.66, is denied.
2. Spire's recovery of funds from SGS due to its under billing during the period not provided for in its tariff from November 24, 2021 to April 12, 2022 shall be no greater than its calculation of service provided November 24, 2021 to February 9, 2022.
3. This order shall be effective August 19, 2023.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Confluence Rivers Utility	)	
Operating Company, Inc.'s Request for	)	
Authority to Implement General Rate	)	<u>File No. WR-2023-0006</u>
Increase for Water Service and Sewer	)	
Service Provided in Missouri Service	)	
Areas	)	

**ORDER CLARIFYING A COMMISSION ORDER
AND DIRECTING A RESPONSE**

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§24. Procedures, evidence and proof

§29. Discovery

The Commission clarified a prior order granting a motion to compel.

§2. Jurisdiction and powers

§19. Records and books of utilities

§22. Parties

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

§19. Records and books of utilities

§29. Discovery

In granting a request for more information about corporate governance, the Commission cited several examples of uncertainty as to what corporation was controlling and managing a water utility.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
August, 2023.

In the Matter of Confluence Rivers Utility	)	
Operating Company, Inc.’s Request for	)	
Authority to Implement a General Rate	)	<u>File No. WR-2023-0006</u>
Increase for Water Service and Sewer	)	Tracking Nos. YW-2023-0113
Service Provided in Missouri Service	)	and YS-2023-0114
Areas	)	

**ORDER CLARIFYING A COMMISSION ORDER
AND DIRECTING A RESPONSE**

Issue Date: August 2, 2023

Effective Date: August 2, 2023

Background

On June 26, 2023,¹ the Staff of the Commission (Staff) filed its *Motion to Compel* (Motion) regarding data request (DR) DR 231.1. On July 6, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or “the Company”) filed its *Response to Staff’s Motion to Compel* (Response). On July 12, the Commission issued its order (July 12 Order), which stated Confluence Rivers shall respond to DR 231.1 no later than July 19.

DR 231.1 is a request for information pertaining to certain board meetings. DR 231.1 arose from a document during Staff’s review of external auditor workpapers that appears to be meeting minutes of a relevant company from a board meeting held in

¹ All dates refer to 2023 unless otherwise indicated.

2021 (the 2021 Meeting). The 2021 Meeting document, confidential and attached, references Josiah Cox as a board member and included the acronym “CSWR”. Staff requested in DR 231.1: 1) board meeting documents from the 2021 meeting; 2) the name of the company that held the 2021 meeting (stated by Confluence Rivers on July 28 to be US Water); and 3) all other board meeting documents for the company that held the 2021 meeting (US Water) between October 1, 2019, and April 30, 2023. Staff asserted its belief that the 2021 Meeting document was the minutes from a Central States Water Resources, Inc. (CSWR, Inc.) board meeting.

Confluence Rivers’ initial response was that the document concerned a board meeting of US Water Systems, LLC (US Water) and that the mention of Josiah Cox as a board member was in error.²

Confluence Rivers subsequently changed its response to reflect its belief that the document concerned a meeting of CSWR, Inc.³ In support of this position, Confluence Rivers stated that the names of the members of the board of directors of CSWR, Inc. are generally the same as those listed on the 2021 Meeting document. The Company also argued that the named officer⁴ on the document designated as submitting the document is an officer of CSWR, Inc.

On July 28, Confluence Rivers again changed its response, stating during a prehearing conference that the company holding the 2021 Meeting at issue in DR 231.1 was US Water.

² Response, para. 21.

³ Response, para. 22.

⁴ The name is designated as confidential, but for clarity the officer referenced here is not Josiah Cox.

US Water is relevant to the underlying rate case as it acquired CSWR, LLC and all of its wholly-owned subsidiaries in November 2018 – including Confluence Rivers.⁵ Central States Water Resources, Inc. (CSWR, Inc.) was CSWR LLC's parent company before it was acquired by US Water. CSWR, Inc. acts as the manager of CSWR, LLC and all companies in the CSWR, Inc. organizational chart.⁶ CSWR, Inc. has a board of directors, CSWR, LLC does not. Confluence Rivers does not have a board of directors.

Procedural History

On July 25, Staff filed its *Motion for an Order Requiring Immediate Compliance with the Commission's Discovery Order and Motion for Expedited Consideration* (Second Motion). On July 27, the Company filed its response (Second Response). On July 28, the parties and the presiding officer discussed the matter during a prehearing conference.

Staff's Second Motion requested that the Commission order Confluence Rivers to comply immediately with the Commission's July 12 Order. Staff also requested that the Commission order Confluence to produce a list of the dates of all US Water and CSWR, Inc. board meetings that took place between October 1, 2019, and April 30, 2023, and state who was present at each of these meetings.

Clarification of July 12 Order

Staff's Second Motion expressed that it wanted the Commission to order Confluence Rivers' to comply with the July 12 Order. Staff's Second Motion indicates that Confluence Rivers informed Staff it was only required to provide meeting materials for the 2021 Meeting in response to DR 231.1. Confluence Rivers' Second Response, and Confluence Rivers' counsel stated the same belief at the July 28 prehearing conference.

⁵ See *attached* Central States Water Resources Corporate Entity Organizational Chart.

⁶ Cox Direct, pp. 3-4.

The Commission will clarify that its July 12 Order stated the Commission “will grant Staff’s motion with regard to the answers to DR 231.1.”⁷, and it ordered that “Confluence Rivers shall respond to DR 231.1”.⁸ Confluence Rivers shall respond to DR 231.1, which included three requests: 1) board meeting documents from the 2021 meeting; 2) the name of the company that held the 2021 meeting (stated by Confluence Rivers on July 28 to be US Water); and 3) all other board meeting documents for the company that held the 2021 meeting (US Water) between October 1, 2019, and April 30, 2023.

Request for US Water and CSWR, Inc. Board Meeting Dates and Attendees

Since Confluence did not fully respond to DR 231.1, Staff requested an order stating that Confluence must produce board meeting dates, as well as identify who was present at each board meeting for US Water and CSWR, Inc. Staff’s Second Motion acknowledged that it did not request a list of CSWR, Inc. board meeting dates in DR 231.1.

In a typical general rate case, the Commission’s review will include the parent company. Here, there are five parent corporations to Confluence Rivers.⁹ One, US Water, is said to be only an investor, but is providing ongoing funding to Confluence Rivers. Another, CSWR, Inc. has been designated as the manager, but they were bought out of ownership interest by US Water in 2018.

It is unclear whether CSWR, Inc. is acting as an agent of US Water in its role as manager. There is also no clear indication whether it is US Water or CSWR, Inc. that is making management decisions regarding Confluence Rivers. Further examples of the

⁷ July 12 Order, p. 8.

⁸ July 12 Order, para. 2.

⁹ Confluence Rivers UHC, LLC; Missouri CSWR, LLC; CSWR, LLC; CSWR, Inc.; US Water.

uncertainty as to the control and management of Confluence Rivers include those listed below.

1) The 2021 Meeting document¹⁰

- The 2021 Meeting document of US Water refers to CSWR in five separate instances.
- The 2021 Meeting document of US Water lists CSWR Management, and per Confluence Rivers' Response, the names of the CSWR, Inc. management are consistent with those listed in the 2021 Meeting document.
- The 2021 Meeting document of US Water states that an executive session was held and management was excused, except for Russ Mitten, "CSWR General Counsel".
- The 2021 Meeting document of US Water indicates that management was invited to the US Water board meeting the following month.
- The 2021 Meeting document of US Water lists as part of its agenda, the following: "CSWR Consolidated Net Loss"; and "MO CSWR Assets".

2) Unattributed salary increase authorization

Staff's Motion indicated that executive salary raises were approved "per board", but without any clarification as to which board. The Company claimed that neither it nor CSWR, LLC have a board of directors – which raises the question then of which board is approving executive salary increases. Confluence Rivers did not respond to this point in its Response, and it was not raised further in the Second Motion or Second Response.

¹⁰ Motion, Exhibit 1C.

3) US Water and Missouri referenced in Texas

The Commission's July 12 Order noted that CSWR, LLC stated to the Texas Public Utility Commission (the Texas Commission) that since US Water's acquisition of CSWR, LLC, US Water's "financial statements contain activity for the acquired business."

CSWR, LLC additionally stated to the Texas Commission that US Water is committed to investing the necessary capital in the acquisition and improvement of CSWR's Missouri operations. The Company did not respond regarding the testimony to the Texas Commission.

4) Corporate names

A copy of CSWR, Inc.'s corporate organization chart is attached. It lists a total of 39 corporate entities across twelve states. Each of the twelve states have three corporate entities for a total of 36. Those 36 are all overseen by CSWR, LLC, which is listed directly under US Water, with CSWR, Inc. shown to the side of US Water. Twenty-one of the listed companies include the acronym "CSWR" as part of the corporate name, not counting Central States Water Resources, Inc. which is regularly shortened to CSWR, as it is in this order.¹¹

Decision

Confluence Rivers has changed its answer twice as to what board meeting a large number of its executive staff attended on a specific date. This gives the Commission concern about the confusion. Multi-layered corporate relationships with holding companies make it difficult for the Commission to know who is making decisions for

¹¹ To be clear, this order refers to Central States Water Resources, Inc. as CSWR, Inc. in order to distinguish it from CSWR, LLC, whose corporate name is the acronym "CSWR".

Confluence Rivers. The Commission is expressly required by Section 393.140(12), RSMo to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart. Further, costs incurred at the CSWR level may be allocated to the individual utility operating companies such as Confluence Rivers. Therefore, it is necessary to verify the legitimacy of the expenses and costs, including capital that Confluence seeks to recover from ratepayers. Ultimately, in a general rate case the Commission inquires as to, and prescribes the apportionment of, capitalization, earnings, debts and expenses where necessary.

The definitions of both water and sewer corporations include those owning, operating, controlling or managing any water or sewer system. As stated in Mr. Cox's testimony, CSWR, Inc. manages all the corporate entities listed in its organizational chart, which includes Confluence Rivers. CSWR, Inc. appears to meet the definition of a water and sewer corporation due to its manager designation.

Given the above questions as to what role US Water and CSWR, Inc. play with regard to Confluence Rivers management and funding, the Commission finds that Staff needs further information regarding the entities seemingly involved in the management of Confluence Rivers, namely US Water and CSWR, Inc. The Commission will grant Staff's request for a list of all US Water and CSWR, Inc. board meeting dates between October 1, 2019, and April 30, 2023, and identification of who was present at each of these meetings no later than on August 4, 2023.

THE COMMISSION ORDERS THAT:

1. Staff's Second Motion's request for clarification is granted. As stated in the July 12 Order, Confluence Rivers shall respond fully to DR 231.1, which includes three requests: 1) board meeting documents from the 2021 meeting; 2) the name of the company that held the 2021 meeting (stated by Confluence Rivers on July 28 to be US Water); and 3) all other board meeting documents for the company that held the 2021 meeting (US Water) between October 1, 2019, and April 30, 2023. Confluence Rivers shall respond no later than August 4, 2023.

2. Staff's Second Motion's request for the list of all US Water and CSWR, Inc. board meeting dates between October 1, 2019, and April 30, 2023, and the identity of those present at each of these meetings is granted. Confluence Rivers shall provide the lists no later August 4, 2023.

3. This order shall be effective immediately upon issuance.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Confluence Rivers Utility	)	
Operating Company, Inc.'s Request for	)	
Authority to Implement General Rate	)	<u>File No. WR-2023-0006</u>
Increase for Water Service and Sewer	)	
Service Provided in Missouri Service	)	
Areas	)	

ORDER REGARDING OPC'S MOTION TO COMPEL

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§19. Records and books of utilities

§22. Parties

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

§6. Weight, effect and sufficiency

The Commission found that several facts indicate a greater involvement in utility operations and management than that of a typical holding company.

§19. Records and books of utilities

§22. Parties

The Commission found that a data request was overly broad in that it requested information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri.

§29. Discovery

The Commission found that its rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. Particular to the Commission, parties may use data requests as a means of discovery.

§29. Discovery

The Commission found that Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence. Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance. Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable. In

determining legal relevance, the court, or administrative agency, must weigh “the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect.”

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
August, 2023.

In the Matter of Confluence Rivers Utility)
Operating Company, Inc.'s Request for)
Authority to Implement a General Rate)
Increase for Water Service and Sewer)
Service Provided in Missouri Service)
Areas)

File No. WR-2023-0006
Tracking Nos. YW-2023-0113
and YS-2023-0114

ORDER REGARDING OPC'S MOTION TO COMPEL

Issue Date: August 10, 2023

Effective Date: August 10, 2023

Procedural History

On July 31, 2023,¹ the Office of the Public Counsel (OPC) issued data request (DR) 3069, which requested copies of the quarterly Investment Memorandums that are prepared by "CSWR" and transmitted to US Water Systems LLC (US Water) for the purposes of requesting funding.²

On August 4, OPC filed its *Motion to Compel* (Motion) regarding DR 3069. The Commission subsequently sought further detail as to what corporate entity OPC intended, Central States Water Resources, Inc. (commonly abbreviated to "CSWR") or the corporate entity named with the acronym, CSWR, LLC. OPC responded that the

¹ All dates refer to 2023 unless otherwise indicated.

² DR 3069 reads in full: In response to Staff Data Request No. 231.1, Confluence provided Staff copies of CSWR presentations made to US Water Systems LLC's ("US Water") Board of Directors. These presentations indicate CSWR prepares and transmits quarterly Investment Memorandums to US Water for purposes of requesting funding. Please provide CSWR's Investment Memorandums for the period January 1, 2019 through June 30, 2023.

documents that reference the quarterly memoranda are titled with the name “Central States Water Resources” without either an Inc. or LLC designation.

OPC stated its belief that the document is referencing Central States Water Resources, Inc. (CSWR, Inc.); however, OPC stated its understanding that CSWR, Inc. does not have any employees. Thus, OPC suggested that the quarterly Investment Memorandums would have to be prepared by employees of CSWR, LLC, as it is the only Central States Water Resources entity to have employees.

Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or “the Company”) is owned by Confluence Rivers UHC, LLC³, which is owned by Missouri CSWR, LLC, which is owned by CSWR, LLC, which is owned by US Water. CSWR, Inc. was the previous parent company until CSWR, LLC was purchased by US Water from CSWR, Inc. CSWR, Inc. now acts as the manager of CSWR, LLC and Confluence Rivers.

On August 9, the Company filed its response (Response). Confluence Rivers raised an objection as to relevance, argued that CSWR, LLC is not a party, and objected that DR 3069 is overly broad.

Discovery

The Commission’s rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.⁴ Particular to the Commission, parties may use DRs as a means of discovery.⁵

³ The Commission interprets UHC to mean Utility Holding Company, but allows that the organizational chart being referenced may include abbreviations.

⁴ Commission Rule 20 CSR 4240-2.090(1).

⁵ Commission Rule 20 CSR 4240-2.090(2).

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence. Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance.⁶ Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.⁷ In determining legal relevance, the court, or administrative agency, must weigh "the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect."⁸ Supreme Court Rule 56.01 also provides that the party seeking discovery has the burden of establishing relevance.

Relevance

OPC's Motion stated that CSWR, LLC drafts and submits quarterly memorandums to US Water for purposes of requesting funding (i.e. financing) to capitalize its investments in CSWR's current systems and in its acquisitions of new systems.⁹ OPC noted that cost of capital and capital structure are major drivers of Confluence's requested rate increase. Thus, OPC argues, CSWR's request for capital is directly relevant.

The Company's Response argued that the information presented by CSWR, LLC is not relevant as the Commission must decide just and reasonable rates, and any expectation of an individual investor has no import to the question of what rates the

⁶ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁷ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁸ *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

⁹ Motion, para. 16.

Commission should order. The Response did not address cost of capital or capital structure.

CSWR, LLC is not a party

Confluence Rivers' Response argued that DR 3069 does not limit its request to presentations regarding Confluence Rivers, but included all presentations and memoranda created by CSWR, LLC, which Confluence Rivers argued is not regulated by the Commission. Confluence Rivers argued that the Commission has previously recognized that a holding company is a non-regulated entity, even when it owns an entity that is regulated. The Company asserted that CSWR, LLC is not a party and DRs are limited to parties. However, OPC's DR 3069 is not an inquiry to CSWR, LLC; rather, it is a request to Confluence Rivers.

OPC's Motion argued that the Commission previously stated that CSWR, Inc. appears to meet the definition of a water and sewer corporation. OPC's Motion connected CSWR, Inc. to CSWR, LLC because CSWR, LLC has employees and CSWR, Inc. does not.

Overly Broad

The Response argued that DR 3069 is overly broad, as it is not limited to Investment Memoranda associated with Confluence Rivers or potential Missouri acquisitions. Thus, it necessarily requests information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri.

The Response also argued that DR 3069 is overly broad as it requests four and a half years of information, which necessarily involves dated information that is not relevant to a rate determination in this case.

Decision

The Commission is expressly required by Section 393.140(12), RSMo, to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart. Further, costs incurred at the CSWR level may be allocated to the individual utility operating companies such as Confluence Rivers. Therefore, it is necessary to verify the legitimacy of the expenses and costs, including capital, which Confluence seeks to recover from ratepayers. Ultimately, in a general rate case the Commission inquires as to, and prescribes the apportionment of, capitalization, earnings, debts and expenses where necessary. Additionally, Section 393.270.4, RSMo, allows the Commission to inquire into any factor it deems relevant when determining a proper rate.

The President of Confluence Rivers, Josiah Cox, is also the President of CSWR, LLC and the President of CSWR, Inc. – each of which is an affiliate of Confluence Rivers.¹⁰ Mr. Cox names CSWR, LLC as the managing affiliate for Confluence Rivers, and indicates that CSWR, LLC's corporate communications department is involved in boil advisory notifications for Confluence Rivers.¹¹ Confluence Rivers witness Todd Thomas described CSWR, LLC as a holding company that operated utility companies.¹² Mr. Thomas also described CSWR, LLC's role as having operational/managerial

¹⁰ Cox Direct, p. 1.

¹¹ Cox Rebuttal, p. 12.

¹² Thomas Direct, p. 1.

oversight over Confluence Rivers.¹³ The above facts indicate a greater involvement in utility operations and management by CSWR, LLC than that of a typical holding company.

The Commission finds that the requested information is relevant as it involves funding requests for CSWR, LLC's current systems – which includes Confluence Rivers. As to Confluence Rivers' argument that CSWR, LLC is simply a holding company, the Commission distinguishes its prior decisions as those cases did not involve questions that the holding company and its individual officers were working for both or were managing or operating the regulated utility or providing regular financing to the regulated utility. This finding of relevance is consistent with the statutory requirements of Section 393.140(12) to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart, and to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the regulated utility.

The Commission finds that, in this case, the time period of four and half years for requested documents is not overly broad. However, the Commission agrees with Confluence Rivers that DR 3069 is overly broad in that it necessarily requests information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri. Therefore, the Commission will limit Confluence Rivers' required answer to Investment Memoranda associated in total or in any part with Confluence Rivers or potential Missouri acquisitions.

¹³ Thomas Direct, p. 1.

THE COMMISSION ORDERS THAT:

1. OPC's Motion to Compel is granted in part. Confluence Rivers shall respond to and provide a full and complete response to OPC's DR 3069, limited to those Investment Memoranda or portions thereof that are associated in total or in any part with Confluence Rivers or potential Missouri acquisitions.
2. This order shall be effective immediately upon issuance.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire	)	
Missouri, Inc. d/b/a Spire for Permission	)	
and Approval and a Certificate of	)	
Convenience and Necessity to Construct,	)	<u>File No. GA-2023-0389</u>
Install, Own, Operate, Maintain, and	)	
Otherwise Control and Manage a Natural	)	
Gas Distribution System to Provide Gas	)	
Service in Cass County, Missouri as an	)	
Expansion of its Existing Certificated	)	
Areas	)	

ORDER APPROVING APPLICATION AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§43. Gas

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§43. Gas

The Commission approved Spire's request to expand its Certificate of Convenience and Necessity (CCN) to a natural gas distribution system in Cass County, Missouri.

GAS**§3. Certificate of convenience and necessity**

The Commission approved Spire's request to expand its Certificate of Convenience and Necessity (CCN) to a natural gas distribution system in Cass County, Missouri.

§3. Certificate of convenience and necessity

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of August, 2023.

In the Matter of the Application of Spire)
Missouri Inc. d/b/a Spire for Permission)
and Approval and a Certificate of)
Convenience and Necessity to Construct,)
Install, Own, Operate, Maintain, and)
Otherwise Control and Manage a Natural)
Gas Distribution System to Provide Gas)
Service in Cass County, Missouri as an)
Expansion of its Existing Certificated)
Areas)

File No. GA-2023-0389

**ORDER APPROVING APPLICATION AND GRANTING
A CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: August 23, 2023

Effective Date: September 2, 2023

Procedural History

On May 16, 2023,¹ Spire Missouri Inc. d/b/a Spire filed an application seeking a certificate of convenience and necessity (CCN) regarding a natural gas distribution system in Cass County, Missouri, as a further expansion of Spire's existing certificated area. Spire also requested waiver of the Commission's rule requiring sixty days' notice prior to filing an application.

Spire's request is for a service area CCN to provide gas to a single facility. The request to serve that facility comes from an existing customer.² Natural gas distribution

¹ All dates refer to 2023 unless otherwise indicated.

² The identity of the customer is confidential, and will not be stated in this order.

service is not currently offered in the area for which a CCN is being requested; however, Spire has Commission-approved certificated areas surrounding the requested section. Spire has also received requests from two residential customers along the route who want natural gas service.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications to intervene were received.

On August 8, the Staff of the Commission (Staff) filed its Recommendation with an attached Memorandum. Staff recommended the Commission grant Spire the requested CCN subject to three recommended conditions.

Time was allowed, but no other responses or objections to the application, to Staff's Recommendation, or to Staff's three recommended conditions were received.³ The requirement for a hearing is met when the opportunity for a hearing has been provided.⁴ No party requested a hearing. Thus, the Commission will rule on the application.

Discussion

Certificate of Convenience and Necessity

Section 393.170, RSMo (Supp. 2022), in subsection 2, requires Spire to have a CCN, which is granted by the Commission, prior to providing natural gas distribution service in the requested Cass County service area. Subsection 393.170.3, RSMo, requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely

³ Commission Rule 20 CSR 4240-2.080(13).

⁴ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁵ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁶ Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

- (1) there must be a need for the service;
- (2) the applicant must be qualified to provide the proposed service;
- (3) the applicant must have the financial ability to provide the service;
- (4) the applicant's proposal must be economically feasible; and
- (5) the service must promote the public interest.⁷

These criteria are known as the Tartan Factors.⁸

There is a need for the service, as the customers have requested such and will need continuing service. Spire is qualified to provide the service, as it is an existing large natural gas distribution public utility and gas corporation, subject to the Commission's jurisdiction.⁹ Spire has the financial ability to construct the system, as no external financing is needed. The proposed transaction is economically feasible as the effect on

⁵ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁶ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

⁷ *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

⁸ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

⁹ Section 386.020 (Supp. 2022).

Spire's revenue requirement indicates that the impact of granting this CCN will not be detrimental to either new, or existing customers. The proposal promotes the public interest as an existing customer and two new customers have requested service and the cost impact is not a detriment.

Based on the application and Staff's Recommendation and Memorandum, the Commission concludes that the Tartan factors for granting a CCN to Spire have been satisfied. Therefore, the Commission will grant Spire the CCN to provide natural gas distribution service within the proposed service area subject to the three unopposed conditions described by Staff.

Spire also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Spire verified that it had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days. The Commission finds good cause to waive the notice requirement.

So that the customers requesting service may timely begin receiving service, the Commission finds it reasonable to make this order effective in fewer than 30 days.

THE COMMISSION ORDERS THAT:

1. Spire's request for waiver from the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D) is granted.
2. Spire is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a natural gas distribution system in area specified area in the application in Cass County, subject to the conditions contained in Staff's recommendation, as follows:
 - a) Spire shall initiate an internal audit of its processes and procedures regarding compliance with Commission Rule 20 CSR 4240-3.205

Filing Requirements for Gas Utility Applications for Certificates of Convenience and Necessity to ensure all of its regulated area of operation has been certified by the Commission. The report shall also include steps taken to avoid constructing and/or operating in uncertified areas in the future.

- b) Spire shall provide its internal audit report to the Commission prior to filing for its next general rate case.
 - c) Spire shall file an updated tariff sheet incorporating Section 18, Township 46 North, Range 31 West for Cass County.
3. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.
4. This order shall become effective on September 2, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Brett Felber,

Complainant

V.

Union Electric Company d/b/a Ameren
Missouri,

Respondent

File No. EC-2023-0395

ORDER GRANTING AMEREN MISSOURI'S MOTION TO COMPEL

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§24. Procedures, evidence and proof

§29. Discovery

At a discovery conference, Complainant stated that he would provide answers to four outstanding data requests. The Commission directed Complainant to answer these data requests, and subsequently granted a motion to compel Complainant to answer the data requests.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of August, 2023.

Brett Felber,	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2023-0395</u>
	)	
Union Electric Company d/b/a Ameren	)	
Missouri,	)	
Respondent	)	

ORDER GRANTING AMEREN MISSOURI'S MOTION TO COMPEL

Issue Date: August 23, 2023

Effective Date: August 23, 2023

This order grants Union Electric Company d/b/a Ameren Missouri motion to compel Complainant to answer outstanding four data requests. Parties appearing before the Commission use data requests to accomplish discovery in cases like this electric complaint.

On July 28, 2023, the Commission held a prehearing conference to address discovery issues. At that discovery conference Complainant stated that he would provide answers to four outstanding data requests from Ameren Missouri.

The Data Requests

- 1. Please provide all documents that support your contention that you applied for a medical hardship waiver prior to the time you were disconnected.**

This data request is relevant because it goes to whether an extension of time should have been granted before Complainant's electric service was disconnected. It is

likely to lead to admissible evidence that Complainant either properly filed for a medical hardship or did not. Complainant stated that he believed he had documents and that he would provide them to opposing counsel.

2. Please admit that at all relevant times to this complaint you lived at the Dividend property.

This data request is relevant because where electric service was provided and whether Complainant was the customer are elements of this complaint. It is likely to lead to admissible evidence that Complainant was or was not a customer at the address where service was disconnected. Complainant stated that he did not live at his residence every day of the year and that he traveled for business and filed tax returns in other states. The Regulatory Law Judge directed complainant to provide Ameren Missouri a list of all the places he had resided from two-weeks prior to his complaint to the date of the prehearing conference. He was also directed to provide his primary address. Complainant indicated he would provide that information to Ameren Missouri.

3. Pursuant to your e-mail dated June 9th, 2023, copied below for convenience, please provide all written evidence that support the following accusations:

- a. **Oh, and which one of you geniuses is trying to make a property investment firm pay a disputed balance? I got the letter from the regulatory department. One, this is illegal; two, my property investment has an A-plus credit rating and, yet Professor Engelbrecht accident or Hibernator Priesmeyer tried to transfer a disputed balance in someone else's name. That is illegal in the state of Missouri. Which one of you want to own up to it? Terry? Jermaine? Aubrey? Eric? At this point you're conducting illegal Page and criminal activity against me. I will be submitting another complaint to the PA's office about this in addition to what I've already sent. Enjoy, because all you aren't going to stop until you are prosecuted. I'm tired of your company's bull(omitted). Here we go. More incredible b-u-l-s-h (omitted). Have fun with your b-u-l-s-h (omitted) because I'll be the one laughing when Genius Quickby (phonetic) and Inspector Grubbs are disbarred for engaging in criminal activity.¹**

¹ It is worth noting that Complainant was told it is inappropriate to disparage opposing counsel. That opposing counsel represents Ameren Missouri, but is not Ameren Missouri. Nonetheless Complainant has

The Regulatory Law Judge narrowed this request to Complaint's evidence that Ameren Missouri attempted to bill one of Complainant's business entities for his residential service. This data request is relevant because it goes to who was billed for electric service and is likely to lead to admissible evidence that Complainant was or was not properly billed. The Regulatory Law Judge directed Complainant to provide any written evidence that Ameren Missouri attempted to bill one of Complainant's companies. Complainant indicated that he would provide an agreement for Complainant's investment firm with an outstanding balance.

4. Please provide all evidence that supports your contention that you were hung up on, called a liar and yelled at by any employee of Ameren Missouri as alleged in your formal complaint.

Complainant indicated he had a witness that could corroborate his allegations. The Regulatory Law Judge directed Complainant to provide any evidence that he was called a liar or hung up on. This data request is relevant because it addresses the nature of customer service Complainant received and is likely to lead to admissible evidence concerning whether adequate customer service was provided.

In response to these four data requests Complainant provided two utility bills for his person at his address for November 4, 2022 and July 8, 2022, which Complainant says show Ameren miscalculated his usage. Complainant also provided an email to an Ameren Missouri employee concerning Ameren Missouri calls showing in Complainant's caller ID as "Boone County Government Cntr." Complainant included a written statement that he had lived in Texas, Wyoming, Kentucky, Tennessee, Kansas, and Vermont.

continued to make ad hominem arguments that inappropriately attack opposing counsel belittling their worthiness to practice law and inappropriately threatening disciplinary action.

Complainant also indicated that he would not disclose specific addresses for the protection and safety of his landlords, unless Ameren Missouri signed a nondisclosure agreement and agreed to provide biometric data. Complainant provided a list of expenses incurred due to disconnection of his electric service.

On August 11, 2023, Ameren Missouri filed a motion to compel Complainant to answer outstanding data requests and to sanction Complainant for disregard of the Commission's discovery rules.

Applicable Law

Commission Rule 20 CSR 4240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Missouri Rule of Civil Procedure 56.01(b) states that parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Parties may inquire into any matter that is reasonably calculated to lead to admissible evidence.²

Complaints before the Commission are governed by Section 386.390, RSMo. The Commission's statutory jurisdiction is to determine whether Ameren Missouri has violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission.

The main subject matter of this complaint is whether Ameren Missouri committed a violation in disconnecting Complainant's electric service or in its customer service

² *State ex. rel. Martel v. Gallagher*, 797 S.W.2d 730 (Mo. App. E.D. 1990).

interactions with him. The Regulatory Law Judge previously directed Complainant to answer these data requests because they are reasonable, relevant, and likely to lead to admissible evidence necessary to the Commission determining this complaint.

Discussion

The same day Ameren Missouri filed its motion to compel, Complainant filed his Notice of Lawsuit Filed Outside of PSC that notice from Complainant states in part: “I have no interest in this matter being decided by the PSC. Opposing counsel has made too many errors and omissions, along with Ameren representatives that warrant this matter to be brought to litigation within St. Louis County Circuit Civil Courts.” This statement echoes previous Complainant statements about having his matter determined elsewhere. However, Complainant has not dismissed his complaint and has continued to make numerous filings in this complaint. Complainant uses each filing as an opportunity to argue what he believes are the only points at issue in this complaint.

Complainant filed a response to Ameren Missouri’s motion to compel claiming that his residential information is confidential, but pointing to no privilege or law supporting his contention. Complainant states that it would be hypocritical of the Commission to grant Ameren Missouri’s motion to compel when Complainant has unanswered data request. But at the prehearing conference Complainant only asserted that one request was unanswered. When asked whether he had any other outstanding data requests for the Commission to address, Complainant stated “that’s it.”

The Commission finds that Ameren Missouri’s motion to compel should be granted. Ameren Missouri’s data requests are relevant and likely to lead to admissible evidence. Complainant will not be allowed to participate in proceedings only when it suits

him. Over objections from Ameren Missouri, the Commission set an evidentiary hearing on this complaint for late August, so that Complainant's complaint could be resolved quickly because he is currently without electric service. To that end, the Commission set August 15, 2023, as the deadline to issue discovery requests and August 21, 2023, as the deadline for any responses to outstanding discovery request. It is now beyond the deadline to answer outstanding discovery requests.

The Commission will order Complainant to answer the four outstanding data requests no later than August 25, 2023, or the Commission will have to cancel the August 30, 2023, evidentiary hearing date and reschedule it to a future date after Complainant has answered outstanding data requests.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's motion to compel is granted. Complainant must answer Ameren Missouri's data requests enumerated in the body of this order no later than August 25, 2023.

2. This order is effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Clark, Senior Regulatory Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Boomerang Wireless LLC	)	
d/b/a enTouch Wireless Application Seeking	)	
Partial Relinquishment of Designation as ETC	)	
On a Wireless Basis (Low-Income Only) in a	)	<u>File No. RD-2024-0006</u>
Certain Service Area Previously Served by	)	
Underlying Carrier Verizon Wireless and	)	
Removal of AT&T Mobility as an Underlying	)	
Carrier	)	

ORDER GRANTING PARTIAL RELINQUISHMENT

TELECOMMUNICATIONS

§7. Jurisdiction and powers of the State Commission

Eligible Telecommunications Carriers (ETCs) can relinquish ETC status upon providing 60 days' notice and demonstrating compliance with 47 United States Code Section 214(e)(4). That statute, in turn, allows the Commission to permit an ETC to relinquish its ETC status if more than one ETC serves in the area, the ETC provides the required advance notice, the ETC subscribers can be served by another ETC, and, if additional facilities are required, sufficient notice must be given for the ETC to purchase or construct the additional facilities.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held in its office in
Jefferson City on the 30th day of
August, 2023.

In the Matter of Boomerang Wireless LLC)
d/b/a enTouch Wireless Application Seeking)
Partial Relinquishment of Designation as ETC)
On a Wireless Basis (Low-Income Only) in a)
Certain Service Area Previously Served by)
Underlying Carrier Verizon Wireless and)
Removal of AT&T Mobility as an Underlying)
Carrier)

File No. RD-2024-0006

ORDER GRANTING PARTIAL RELINQUISHMENT

Issue Date: August 30, 2023

Effective Date: September 29, 2023

On July 18, 2023, Boomerang Wireless LLC d/b/a enTouch Wireless filed an application to relinquish part of its Eligible Telecommunications Carrier (ETC) designation. enTouch Wireless states that it no longer uses the Verizon Wireless and AT&T Mobility networks as carriers, and that it wishes to relinquish ETC status for its customers in those areas. Exhibit B of its application contains the areas in which it wishes to relinquish ETC status.

On August 11, 2023, the Staff of the Commission (Staff) filed its recommendation. No other applications to intervene, requests for hearing, or recommendations have been filed.

Staff explained that the Commission's rules allow for relinquishment of ETC status.¹ ETC carriers can relinquish ETC status upon providing 60 days' notice and upon demonstrating compliance with 47 U.S.C. Section 214(e)(4).

That statute, in turn, allows the Commission to permit an ETC to relinquish its ETC status if more than one ETC serves in the area in which the carrier wishes to relinquish its ETC status, the carrier provides the required advance notice, the carriers' subscribers can be served by another ETC, and, if additional facilities are required, sufficient notice must be given for the ETC to purchase or construct the additional facilities. Staff concluded that enTouch Wireless complies with the requisite rules and statutes permitting the partial relinquishment of its ETC status.

Based on enTouch Wireless' application and Staff's recommendation, the Commission finds enTouch Wireless has demonstrated compliance with 47 U.S.C. Section 214(e)(4). Thus, the Commission will grant enTouch Wireless' application.

THE COMMISSION ORDERS THAT:

1. The application filed by enTouch Wireless is granted.
2. The partial relinquishment of enTouch Wireless' ETC status in the areas listed in Exhibit B of the application is approved.
3. This order shall become effective on September 29, 2023.
4. This file may be closed on September 30, 2023.

¹ Commission Rule 20 CSR 4240-31.015(4).



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire	)	
Missouri, Inc. d/b/a Spire for Permission	)	
and Approval and a Certificate of	)	
Convenience and Necessity to Construct,	)	
Install, Own, Operate, Maintain, and	)	<u>File No. GA-2023-0374</u>
Otherwise Control and Manage a Natural	)	
Gas Distribution System to Provide Gas	)	
Service in Johnson County, Missouri as an	)	
Expansion of its Existing Certificated	)	
Areas	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§43. Gas

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

§43. Gas

The Commission approved a gas distribution utility’s application to expand its service area in Johnson County, Missouri.

GAS

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility’s application to expand its service area in Johnson County, Missouri.

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at the
Commission's office in
Jefferson City on the 30th day
of August, 2023.

In the Matter of the Application of Spire)
Missouri, Inc. d/b/a Spire, for Permission)
and Approval and a Certificate of)
Convenience and Necessity to Construct,)
Install, Own, Operate, Maintain, and)
Otherwise Control and Manage a Natural)
Gas Distribution System to Provide Gas)
Service in Johnson County, Missouri as an)
Expansion of its Existing Certificated)
Areas)

File No. GA-2023-0374

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: August 30, 2023

Effective Date: September 29, 2023

On April 27, 2023, Spire Missouri, Inc., d/b/a Spire, filed an application with the Commission ("Application") seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Johnson County, Missouri, as a further expansion of its existing certificated area. The area subject to the CCN request is described as Section 16, Township 46 North, Range 25 West of Johnson County ("Section 16"). Section 16 is adjacent to Commission-approved certificated areas served by Spire.

In its Application, Spire stated that a potential customer operating in Section 16 approached Spire for natural gas service. In April 2018, Spire installed 2,170 feet of

six-inch plastic main and 985 feet of service line to the potential customer's building and began providing natural gas service. Spire had no prior assets in Section 16, has installed no additional assets in the section, and serves no other customers in the section.

In its Application, Spire requested that the 60-day notice provision of Commission Rule 20 CSR 4240-4.017(1) be waived. The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

On August 14, 2023, the Staff of the Commission (Staff) filed a recommendation that a CCN should be granted for the service area described in the Application, subject to certain conditions. Staff also agreed with Spire's position that good cause exists to waive the 60-day notice requirement. Spire has not filed a response to Staff's recommendation.

Staff's recommendation addressed the fact that Spire placed the Section 16 main and service line in service prior to obtaining a CCN from the Commission to operate in Section 16. The revenue requirement impacts associated with the connection of the new customer are embedded in Spire's current tariffed rates, as approved in Spire's rate case, File No. GR-2022-0179. However, Staff estimates inclusion of the connection of the new Section 16 customer had an immaterial effect on the revenue requirement. Based on replies from Spire to Staff data requests, Staff concluded that Spire did not intentionally provide natural gas service outside of its certificated area and its actions did not detrimentally impact the public.

The Commission may grant a gas corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public

service.”¹ The Commission articulated criteria to be used when evaluating applications for CCNs in *In Re Intercon Gas, Inc.*²

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.³

There is a need for the service, as the commercial customer approached Spire requesting a distribution extension to Section 16, and natural gas was – neither at that time nor currently – offered by another regulated or unregulated entity in Section 16.

Spire is qualified to provide the service, as it already provides gas service to customers in the City of St. Louis, St. Louis County, Jackson County, St. Charles County, Greene County, and 37 other Missouri counties. Spire has the financial ability to provide the service, as no external financing was used on the project and Staff has no concerns with Spire’s financial risk profile.

The Commission agrees with Staff’s assessment that the proposal is economically feasible in that the effect on the revenue requirement will not be detrimental to the new customer or Spire’s general body of ratepayers.

¹ Section 393.170.3, RSMo.

² 30 Mo P.S.C. (N.S.) 554, 561 (1991).

³ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

Further, the Commission finds that the proposal promotes the public interest by providing service to a previously unserved area and promotes economic development and growth.

Based on the Application and Staff's recommendation, the Commission concludes that the factors for granting a certificate of convenience and necessity have been satisfied. The Commission further finds Spire's provision of gas service to the area, as described in its Application, is necessary and convenient for the public service. Thus, the Commission will grant Spire a CCN to provide gas service within the area set out in the Application.

Finally, the Commission will grant Spire's request for waiver of the 60-day case filing notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Spire's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

THE COMMISSION ORDERS THAT:

1. Spire is granted a certificate of convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service for the area in Johnson County, Missouri described as Section 16, Township 46 North, Range 25 West of Johnson County, subject to the following conditions:

- a. Spire shall initiate an internal audit of its processes and procedures regarding compliance with Commission Rule 20 CSR 4240-3.205 Filing Requirements for Gas Utility Applications for Certificates of Convenience and Necessity to ensure all of its regulated area of operation has been certified by the Commission. The report shall also include steps taken to avoid constructing and/or operating in uncertified areas in the future. Spire

shall provide its internal audit report to the Commission prior to filing for its next general rate case.

- b. Spire will record an adjustment to reduce gross plant for Contributions in Aid of Construction (CIAC) (reduce rate base) by \$4,000. Spire will file documentation of its adjustment to reduce gross plant for CIAC in this case docket in EFIS and provide the documentation with their application in their next general rate case.
 - c. Spire shall file an updated tariff sheet incorporating Section 16, Township 46 North, Range 25 West for Johnson County.
2. The sixty-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).
 3. This order shall become effective on September 29, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Timothy Allegri,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2024-0015</u>
	)	
Evergy Metro, Inc. d/b/a Evergy Missouri	)	
Metro and Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West,	)	
Respondent	)	

ORDER DENYING STAFF’S MOTION TO PURSUE AN INJUNCTION

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§2. Jurisdiction and powers

§24. Procedures, evidence and proof

In denying Staff’s Motion to Pursue an Injunction, the Commission found that for a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. The Commission denied Staff’s request because the motion failed to allege facts supporting that the utility company was about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision.

**STATE OF MISSOURI
 PUBLIC SERVICE COMMISSION**

At a session of the Public Service
 Commission held at its office in
 Jefferson City on the 31st day
 of August, 2023.

Timothy Allegri,

Complainant,

v.

Evergy Metro, Inc. d/b/a Evergy Missouri
 Metro and Evergy Missouri West, Inc. d/b/a
 Evergy Missouri West,

Respondent

File No. EC-2024-0015

ORDER DENYING STAFF'S MOTION TO PURSUE AN INJUNCTION

Issue Date: August 31, 2023

Effective Date: August 31, 2023

Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy) is seeking permanent easements to allow it to relocate an overhead transmission line as part of an infrastructure improvement project along Highway 13 in Lafayette and Johnson Counties. That project is still in the planning stages. Timothy Allegri, Complainant, filed a formal complaint alleging that Evergy refused to negotiate easements in the public interest and made misleading statements concerning its certificate of convenience and necessity (CCN) for the Highway 13 infrastructure improvement project. The Commission issued notice of the complaint and a Staff report and recommendation about the complaint are due September 25, 2023.

On August 29, 2023, the Staff of the Commission (Staff) filed *Staff Response, Motion for Expedited Treatment and Motion for Injunction*. Staff's motion states that Evergy initiated a condemnation action on July 27, 2023. This eminent domain action was

brought in circuit court to acquire easements to move its overhead transmission line. Staff states that eminent domain proceedings are set to occur in the Circuit Court of Lafayette County on September 6, 2023.

Staff asks the Commission to direct its General Counsel to seek a temporary injunction of the eminent domain proceedings, staying the circuit court proceedings until this complaint case is resolved. In support of its request, Staff states that it is possible that irreversible damage could occur to the complainant and others enumerated in Complainant's original July 25, 2023, complaint filing. Staff further states that the complaint raises concerns about the prudence of Evergy's actions, the need for the project, and the bounds of the authority granted in Evergy's CCN. Staff believes those should be fully investigated prior to any eminent domain determination.

Evergy replied to Staff's motion. Evergy notes that Chapter 523, RSMo., gives circuit courts, and not the Commission, the statutory authority to resolve all factual and legal issues related to eminent domain actions. Evergy asks the Commission to deny Staff's motion.

The Office of the Public Counsel and Complainant filed responses in support of Staff's request to seek an injunction.

Applicable Law

The Commission has jurisdiction to hear complaints under Section 386.390.1, RSMo, which provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission.

Staff relies on Section 386.360 RSMo., for the Commission's authority to direct its General Counsel to seek injunctive relief. Section 386.360.1 RSMo., provides that

whenever the Commission believes a public utility is “failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done...”in violation of a law subject to the Commission’s jurisdiction or of any order or decision of the Commission, it shall direct the General Counsel to commence an action in circuit court for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Discussion

Staff requests the Commission order its General Counsel to request an injunction to halt or stay the eminent domain proceedings pending the resolution of this complaint case. Staff will continue its investigation into this case and the complainant’s underlying allegations.

For a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. Staff’s request must be denied because the motion failed to allege facts supporting that Evergy is about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision. Further, this complaint has not been decided and the Commission has not made any finding that Evergy has violated any law, rule or order of the Commission.

Staff’s general concerns and topics for investigation do not provide sufficient facts to support the contention that a violation of law, rule or order of the Commission has or is about to occur. The Commission cannot seek an injunction where there is no violation or imminent violation of law subject to Commission jurisdiction, a Commission rule, or a

Commission order. Additionally, Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings. Therefore, the Commission will deny Staff's request.

THE COMMISSION ORDERS THAT:

1. Staff's motion to have the Commission direct its General Counsel to seek an injunction in circuit court is denied.
2. This order is effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Osage	)	
Valley Electric Cooperative Association &	)	
the City of Harrisonville, Missouri for	)	
Approval of a Written Territorial Agreement	)	<u>File No. EO-2023-0439</u>
Designating the Boundaries of Each Electric	)	
Service Supplier Within the City of	)	
Harrisonville, Cass County, Missouri.	)	

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives.

§6. Territorial agreements

§11. Territorial agreements

The Commission may approve a territorial agreement's service area designation if the territorial agreement in total is not detrimental to the public interest.

§6. Territorial agreements

§11. Territorial agreements

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of September, 2023.

In the Matter of the Application of Osage)
Valley Electric Cooperative Association &)
the City of Harrisonville, Missouri for)
Approval of a Written Territorial Agreement)
Designating the Boundaries of Each Electric)
Service Supplier Within the City of)
Harrisonville, Cass County, Missouri.)

File No. EO-2023-0439

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: September 14, 2023

Effective Date: October 14, 2023

This order approves a new territorial agreement between the Osage Valley Electric Cooperative Association (Osage Valley) and the City of Harrisonville, Missouri (Harrisonville) (collectively referred to as the "Applicants"). The proposed Agreement concerns a service area within Harrisonville and Cass County, Missouri. Subject to the terms of the territorial agreement, the Applicants state that they have specifically designated the boundaries of the exclusive electric service area of each electric service supplier for service of new structures in portions of Cass County. The Applicants state that the impetus for the agreement is a request by the Missouri Department of Transportation to serve new facilities to be installed within the city limits of Harrisonville. Harrisonville desires Osage Valley to provide electric service to those facilities because Osage Valley has facilities in the area, and doing so would prevent duplication of services.

Procedural History

On June 27, 2023, the applicants filed a Joint Application (Joint Application) for approval of their Territorial Agreement (Agreement) pursuant to 20 CSR 4240-2.060,

20 CSR 4240-3.130, and Sections 394.312 and 416.041, RSMo. The Applicants did not file a request for waiver of notice required by Commission Rule 20 CSR 4240-4.017, pursuant to 20 CSR 4240-4.017(1)(D), which requires that an applicant file a notice at least 60 days before filing their application. The parties filed affidavits and verifications stating that they had no contact with the Commission regarding issues likely to be substantive to the case during the preceding 150 days, but neither party requested a waiver of the notice required by the Commission rule.

On July 3, 2023, the Commission issued an order directing the parties to correct the deficiency in their application no later than August 2, 2023; directing the Staff of the Commission (Staff) to file a recommendation or a status report no later than August 3, 2023; and setting the deadline for applications to intervene at July 23, 2023. The Commission received no applications to intervene or other objections, and Staff filed its recommendation timely on August 3, 2023, recommending that the Commission approve the parties' application, and acknowledging that the parties had not yet satisfied the 60-day notice requirement.

On August 21, the Commission issued a second notice of deficiency to the parties explaining that it would not take action on the application until the parties requested a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017. And on September 5, 2023, the parties filed a motion for waiver of the sixty-day notice requirement.

Findings of Fact

1. Harrisonville is a municipality organized under the laws of the State of Missouri. Harrisonville owns, operates and maintains an electric distribution system within its city limits and primarily serves the residents located within the city limits, as specified

in Section 91.025, RSMo (Supp. 2022). Its principal office is located at 300 East Pearl Street, Harrisonville, Missouri 64701.

2. Osage Valley is a rural electric cooperative organized under Chapter 394, RSMo, to provide electric service to its members in all or parts of seven Missouri counties, including Cass County, in which lies the parcels that are the subject of the Joint Application. Its principal office is located at 1321 Orange Street, Butler, Missouri 64730.

3. Subject to the approval of the Commission pursuant to Section 394.312, RSMo, the Applicants have entered into an agreement (styled “Territorial Agreement”) that modifies their existing electric service boundaries.

4. The subject area of the Agreement (Service Area) has been annexed into the city limits of Harrisonville, and there are no other electric service providers in the Service Area. Service to structures within the Service Area is currently being provided by Osage Valley.

5. Under the Agreement, Osage Valley shall have the exclusive right, as between Harrisonville and Osage Valley, to provide permanent service to all structures now located within the Service Area, and all new structures that may be built therein.

6. Osage Valley has existing facilities in the area and its provision of electric service will preclude an otherwise duplication of facilities should Harrisonville need to extend its facilities in order to provide electric service to the two new metering points illustrated in the Agreement.

7. Neither Harrisonville nor Osage Valley have had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

8. No persons have sought intervention or requested a hearing, nor have the Applicants responded to Staff's Recommendation.

9. The filing parties filed verified declarations stating that each party has had no communication with the office of the Commission within the prior one hundred fifty days regarding any substantive issue likely to be in the case and delaying the filing for sixty days would cause harm.

Conclusions of Law

A. Under Section 394.312, RSMo, the Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives, thus the Applicants are subject to the Commission's jurisdiction in this case.¹

B. Under Sections 394.312.5, RSMo, the Commission may approve the territorial agreement's service area designation if the territorial agreement in total is not detrimental to the public interest.

C. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

D. Commission Rule 20 CSR 4240-4.017.1 requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017.1(D) provides that the Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the office of the

¹ Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

Commission about the application within one hundred fifty days before filing the application.

E. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.²

Decision

It is the Commission's decision that the Agreement as a whole is not detrimental to the public interest. Based on the representations of the parties, the Commission will waive application of the sixty-day notice requirements of Commission Rule 20 CSR 4240-4.017(1) pursuant to 20 CSR 4240-4.017(1)(D). The Commission will approve the Agreement.

THE COMMISSION ORDERS THAT:

1. The Agreement, filed on June 27, 2023, is approved.
2. Harrisonville and Osage Valley are granted a waiver of the sixty-day notice requirement of Commission Rule 20 CSR 4240-4.017.
3. Harrisonville and Osage Valley are authorized to perform the Agreement, and all acts and things necessary to performance.
4. This order shall be effective on October 14, 2023.
5. This file shall be closed on October 15, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

² *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of	)	
Eversgy Metro, Inc. d/b/a Eversgy Missouri	)	<u>File No. ET-2024-0061</u>
Metro and Eversgy Missouri West, Inc. d/b/a	)	
Eversgy Missouri West for Approval of Tariff	)	
Revisions to TOU Program	)	

ORDER APPROVING AMENDED APPLICATION AND TARIFF

ELECTRIC

§9. Jurisdictions and powers of the State Commission

§20. Rates

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

RATES

§3. Jurisdictions and powers of the State Commission

§62. Initiation of rates and rate changes

§80. Kinds and forms of rates and charges in general

§100. Variable rates based on costs-generally

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 27th day
of September, 2023.

In the Matter of the Joint Application of)
Evergy Metro, Inc. d/b/a Evergy Missouri)
Metro and Evergy Missouri West, Inc. d/b/a)
Evergy Missouri West for Approval of Tariff)
Revisions to TOU Program)

File No. ET-2024-0061
Tracking Nos. JE-2024-0036
and JE-2024-0037

ORDER APPROVING AMENDED APPLICATION AND TARIFF

Issue Date: September 27, 2023

Effective Date: October 8, 2023

Original Application

On September 8, 2023, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively, Evergy) filed an application for Approval of Tariff Revisions to TOU Program.¹ Evergy also filed tariffs, bearing an effective date of October 8, 2023.

Evergy's application included four requests. Specifically, those four requests were:

- (i) Modify the default TOU rate from the high differential 2-period TOU rate [i.e. Standard Peak Saver] to the low differential Peak Adjustment TOU rate [i.e. Peak Reward Saver];
- (ii) Modify the tariffs to allow residential customers to opt-in to the traditional residential rate (i.e. "Anytime Plan") which has historically been in effect and is proposed to be offered as an option beginning May 1, 2024 rather than

¹ Calendar references are to 2023 unless otherwise noted.

being terminated as scheduled under the approved TOU Implementation Program;

- (iii) Restrict rate switching to mitigate adverse revenue impacts by selective switching between the offered tariffs to artificially lower a customer's annual bill below reasonable cost of service through tariff selection only;
- (iv) Revise the estimates of education, outreach and implementation costs consistent with the revisions requested to be approved in the Application.

The Commission issued notice, and reserved September 19 for a potential hearing. The Commission's Staff (Staff) filed a Motion to Suspend on September 13. Staff stated that Evergy's application amounts to single-issue ratemaking, which is prohibited in Missouri. Staff followed up with an Interim Recommendation on September 15, asking the Commission to either suspend or reject the tariffs due to an increase in revenues Staff contends the tariffs would provide Evergy.

On September 14, the Office of the Public Counsel (OPC) asked the Commission to cancel the hearing because parties do not have adequate time to prepare for the hearing, thus depriving parties of due process. Renew Missouri responded on September 15, advising the Commission to reject the tariffs.

On September 15, Evergy responded. Evergy states that it does not seek to change the price of electricity, but asks for the Commission to switch the default TOU rate to the low-differential TOU already approved. OPC further responded on September 15, objecting to Evergy's application.

Consumers Council of Missouri applied to intervene on September 15. No objections were filed. The Commission will grant the application to intervene.

Amended Application

On September 18, Evergy filed an amended application. Evergy withdrew its proposed tariff changes, except Evergy continues to request approval to switch the default TOU rate in its tariffs from the high differential two-period TOU rate to the low differential Peak Adjustment TOU rate.

Evergy stated that if approved it will change the names of the high differential Residential Time of Use - Two Period rate from “Standard Peak Saver” to “Summer Peak Time Based Plan” and (2) the low differential Residential Peak Adjustment Service rate from “Peak Reward Saver” to “Default Time Based Plan.” Evergy filed substitute tariff sheets to implement its amended application on September 21.

On September 25, Staff and OPC reiterated their objections to the application. Staff maintains that Evergy is seeking single-issue ratemaking, and that Evergy must file a rate case to receive the relief it requests. OPC states that Evergy is attempting a collateral attack on the Report and Order in File Nos. ER-2022-0129 and ER-2022-0130. OPC further objects to Evergy’s motion for expedited treatment, and a waiver of the Commission’s 60-day notice rule.

Also on September 25, Evergy withdrew the tariff sheets that were inconsistent with the amended application.²

Discussion

Evergy’s TOU program allows customers to select from different rate plans based upon personal preference. Also, customers are free to change their choices at any time,

² Specifically, Evergy withdrew 12th Revised Sheet 5A, 12th Revised Sheet 5B, 3rd Revised Sheet 7 and 1st Revised Sheet 7B for Tracking No. JE-2024-0036, and 3rd Revised Sheet 146.1, 2nd Revised Sheet 146.5, and 1st Revised Sheet No. 165 for Tracking No. JE-2024-0037.

including switching their TOU plan multiple times a year. Evergy's proposed tariff instead modifies which of the multiple TOU rate choices is the default in the TOU rate program in its tariffs.

Staff is concerned that approving the tariff would result in single-issue ratemaking. But Evergy is not requesting that the Commission change any of the current rate choices under the available TOU plans. Instead, it is requesting that from the multiple TOU rate options included in Evergy's current tariff, that the Commission switch the default TOU rate from the high-differential TOU to the low-differential TOU rate.

Evergy's amended application does not seek to change the price per kWh the Commission established under the approved TOU rate implementation plan. What the application does request is to modify the tariff language that determines what TOU rate is first applied to customers who do not choose a specific TOU rate—the default TOU rate. Evergy's amended application is not a collateral attack on the rate cases' Amended Reports and Orders, but simply requesting approval of a tariff filing to modify the default in TOU choices to customers.

The motion for expedited treatment is moot, as Evergy's tariffs will take effect on 30 days' notice, as allowed by statute. The Commission may approve this tariff without suspension thereof, and without a hearing.³

Commission Rule 20 CSR 4240-4.017(1) required parties to give the Commission 60 days' notice before filing a case. The Commission may waive this rule for good cause shown. Evergy has demonstrated good cause by stating it wishes to expeditiously implement the TOU rates beginning in October, 2023, as required by its tariff provisions.

³ See *In re KCP&L*, 509 S.W.3d 757, 785 (Mo.App. W.D. 2016); *State ex rel. Coffman v. PSC*, 121 S.W.3d 534, 539 (Mo.App. W.D. 2003).

To allow the tariffs to take effect on October 8, 2023, so that Evergy may begin switching customers to their TOU choices, the Commission finds it reasonable to make its order effective in less than 30 days after issuance.

THE COMMISSION ORDERS THAT:

1. The amended application is approved.
2. The following tariff sheets filed by Evergy Missouri Metro on September 8, 2023 (Tariff Tracking No. JG-2024-0036), as substituted on September 21, 2023, are approved to become effective on October 8, 2023:

P.S.C. MO. No. 7

**3rd Revised Sheet No. 5, Cancelling 2nd Revised Sheet No. 5
1st Revised Sheet No. 5D, Cancelling Original Sheet No. 5D
8th Revised Sheet No. 6, Cancelling 7th Revised Sheet No. 6
1st Revised Sheet No. 7F, Cancelling Original Sheet No. 7F
12th Revised Sheet No. 8, Cancelling 11th Revised Sheet No. 8**

3. The following tariff sheets filed by Evergy Missouri West on September 8, 2023 (Tariff Tracking No. JG-2024-0037), as substituted on September 21, 2023, are approved to become effective on October 8, 2023:

P.S.C. MO. No. 1

**2nd Revised Sheet No. 146, Cancelling 1st Revised Sheet No. 146
3rd Revised Sheet No. 146.3, Cancelling 2nd Revised Sheet No. 146.3
1st Revised Sheet No. 146.7, Cancelling Original Sheet No. 146.7
1st Revised Sheet No. 146.9, Cancelling Original Sheet No. 146.9**

4. Commission Rule 20 CSR 4240-4.017(1) is waived for this application.
5. The motion for expedited treatment is denied as moot.
6. Consumers Council of Missouri's application to intervene is granted.
7. This order shall become effective on October 8, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Holsman, Kolkmeyer and
Hahn CC., concur.
Rupp, Chm. and Coleman, C. dissent.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro) **File No. EF-2023-0425**
for Authority to Issue Debt Securities)

ORDER APPROVING APPLICATION FOR FINANCING AUTHORITY

ELECTRIC

§38. Financing practices

The Commission approved an electric utility's application to issue debt securities.

§38. Financing practices

The Commission found that Section 393.200, RSMo (2016), and Commission Rule 20 CSR 4240-10.125 require a utility to obtain the Commission's authority to issue debt securities.

§38. Financing practices

The Commission found that Sections 393.180 and 393.200, RSMo (2016), authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.

SECURITY ISSUES

§3. Authorization by a corporation

§40. Purposes and subjects of capitalization generally

The Commission found that Sections 393.180 and 393.200, RSMo (2016), authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.

§14. Jurisdiction and powers of the State Commission

The Commission approved an electric utility's application to issue debt securities.

§16. Necessity of authorization by the Commission generally

The Commission found that Section 393.200, RSMo (2016), and Commission Rule 20 CSR 4240-10.125 require a utility to obtain the Commission's authority to issue debt securities.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
October, 2023.

In the Matter of the Application of Evergy)
Metro, Inc. d/b/a Evergy Missouri Metro)
for Authority to Issue Debt Securities)

File No. EF-2023-0425

ORDER APPROVING APPLICATION FOR FINANCING AUTHORITY

Issue Date: October 4, 2023

Effective Date: October 20, 2023

On August 22, 2023,¹ Evergy Metro, Inc. d/b/a Evergy Missouri Metro (EMM) filed an application requesting authority to refinance \$79,480,000 of existing tax-exempt Environmental Improvements Revenue Refunding Bonds (“EIRR Bonds”) that are scheduled to mature on December 1.²

In 1983, the City of Burlington, Kansas issued bonds, the proceeds of which were used to finance the design, purchase, and installation of certain air and water pollution control facilities at EMM’s Wolf Creek generating station. Those original bonds were subsequently refunded with EIRR Bonds Series 1993A and 1993B refunding bonds (collectively, the “Series 1993 Bonds”). The Series 1993 Bonds consist of \$40,000,000 of 1993A Burlington EIRR Bonds 2.95% due December 1 and \$39,480,000 of 1993B Burlington EIRR Bonds 2.95% due December 1. EMM now seeks authority to refinance the Series 2013 Bonds through the issuance of 2023 EIRR Bonds.

¹ Unless otherwise noted, all date references are to the year 2023.

² Evergy Missouri Metro’s application was filed pursuant to Sections 393.180, 393.190, and 393.200, RSMo 2016, and Commission Rules 20 CSR 4240-2.060, 20 CSR 4240-10.125, and 20 CSR 4240-4.017(1)(D). Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

In its application, EMM also requested expedited treatment of its financing application such that a Commission order granting it financing authority would be effective October 20. EMM stated that it needs sufficient time before the maturity date, due to the relative complexity of tax-exempt issuances, the tight issuance windows in November and December, due to the holidays, the third quarter earnings blackout, and volatile interest rates.

On September 13, the Staff of the Commission (Staff) filed its recommendation that the Commission approve EMM's application, subject to certain conditions. On September 20, EMM filed a response to Staff's recommendation, in which it agreed to Staff's recommended conditions. The time to file responses to Staff's recommendation has passed and no other responses were filed.

Section 393.200, RSMo, and Commission Rule 20 CSR 4240-10.125 require EMM to obtain the Commission's authority to issue debt securities. Sections 393.180 and 393.200, RSMo, authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.³ If the utility's request falls within the enumerated purposes and is necessary or reasonably required, the Commission may grant the request.⁴

After review of EMM's application and of Staff's recommendations, the Commission concludes that granting EMM's request accords with EMM's stated purposes, that the issuance of the debt securities proposed in the application is, or will be, reasonably required for those stated purposes, and that such purposes are not in

³ Purposes include "the acquisition of property, the construction, completion, extension or improvement of its plant or system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations." Section 393.200, RSMo

⁴ *In re Laclede Gas Co. v. Mo. Pub. Serv. Com'n.* 526 S.W.3d 245 (Mo. App. 2017).

whole, or in part, reasonably chargeable to operating expenses or to income. Accordingly, the Commission finds that the request satisfies Section 393.200, RSMo. EMM's application for authority to refinance existing EIRR Bonds will be approved, subject to the conditions recommended by Staff.

Based on the reasons cited by EMM, the Commission also finds it reasonable to make this order effective in less than 30 days, so that this order is effective on the date requested by the company.

THE COMMISSION ORDERS THAT:

1. Everbay Missouri Metro's request for expedited treatment is granted.
2. Everbay Missouri Metro is authorized to refinance \$79,480,000 of existing tax-exempt Environmental Improvements Revenue Refunding Bonds that are scheduled to mature on December 1, as set out in its application.
3. Everbay Missouri Metro's application filed on August 22, is approved, subject to the following conditions:
 - a. Nothing in this Order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, which includes, but is not limited to, the capital structure, and the Commission reserves the right to consider the rate making treatment to be afforded these transactions, and their effect on the cost of capital, in future rate cases;
 - b. Everbay Missouri Metro shall file with the Commission, through the Commission's electronic filing and information system (EFIS) in this case, any information concerning communication with credit rating agencies concerning this issuance;
 - c. Everbay Missouri Metro shall file with the Commission (as a non-case related submission in EFIS under "Utility Compliance e-Filings & Search" – "New Non-Case e-Filing" – "Ordered Submission"), any credit rating agency reports published on Everbay Missouri Metro's corporate credit quality or the credit quality of its securities;

- e. Evergy Missouri Metro shall file a five-year capitalization expenditure schedule in future finance cases; and
 - f. To the extent that any non-regulated investments made by Evergy Missouri Metro or Evergy, Inc. and affiliated companies may materially impact Evergy Missouri Metro's credit quality and resulting credit ratings, Evergy Missouri Metro shall notify Staff of such possibility within ten business days of filing a report to the Securities and Exchange Commission (SEC) and provide a status report to the Commission.
4. Evergy Missouri Metro is authorized to execute all documents and take all actions necessary for the above-described transactions.
5. This order shall become effective on October 20, 2023.
6. This file shall close on October 21, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Evergy Metro, Inc. d/b/a)
Evergy Missouri Metro's Submission of Its) **File No. EO-2023-0361**
2022 Renewable Energy Standard)
Compliance Report)

In the Matter of Evergy Missouri West, Inc.)
d/b/a Evergy Missouri West's Submission of) **File No. EO-2023-0362**
Its 2022 Renewable Energy Standard)
Compliance Report)

In the Matter of Evergy Metro, Inc. d/b/a)
Evergy Missouri Metro's Submission of Its) **File No. EO-2023-0363**
2023 Renewable Energy Standard)
Compliance Plan)

In the Matter of Evergy Missouri West, Inc.)
d/b/a Evergy Missouri West's 2023) **File No. EO-2023-0364**
Renewable Energy Standard Compliance)
Plan)

**ORDER REGARDING 2022 RES COMPLIANCE REPORTS AND
2023 RES COMPLIANCE PLANS AND ORDER GRANTING VARIANCE****ELECTRIC****§13.1. Energy Efficiency****§42. Planning and management**

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its Office in Jefferson City on the 4th day of October, 2023.

In the Matter of Evergy Metro, Inc. d/b/a)
Evergy Missouri Metro's Submission of Its) **File No. EO-2023-0361**
2022 Renewable Energy Standard)
Compliance Report)

In the Matter of Evergy Missouri West, Inc.)
d/b/a Evergy Missouri West's Submission of) **File No. EO-2023-0362**
Its 2022 Renewable Energy Standard)
Compliance Report)

In the Matter of Evergy Metro, Inc. d/b/a)
Evergy Missouri Metro's Submission of Its) **File No. EO-2023-0363**
2023 Renewable Energy Standard)
Compliance Plan)

In the Matter of Evergy Missouri West, Inc.)
d/b/a Evergy Missouri West's 2023) **File No. EO-2023-0364**
Renewable Energy Standard Compliance)
Plan)

**ORDER REGARDING 2022 RES COMPLIANCE REPORTS AND
2023 RES COMPLIANCE PLANS AND ORDER GRANTING VARIANCE**

Issue Date: October 4, 2023

Effective date: November 3, 2023

On April 17, 2023,¹ Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively, Evergy) filed their Renewable Energy Standard (RES) Compliance Reports (Reports) for 2022 and Plans (Plans) for 2023 as required by Commission Rule 20 CSR 4240-20.100(8). Along with its Reports, Evergy requested a variance from Commission Rule 20 CSR

¹ Unless otherwise noted, all dates refer to the year 2023.

4240-20.100(8)(A)1.I.(V), which requires meter readings used for calculation of the payments for Renewable Energy Credits (RECs) by the electric utility to renewable energy resources not owned by the electric utility. Evergy explained in its Reports that certain meter reading information is not provided by the vendors from whom Evergy purchases RECs, but that substitute invoice information was submitted to the Staff of the Commission (Staff).

Commission Rule 20 CSR 4240-20.100(8) requires Staff to review the utilities' compliance Reports and Plans and to file a report about its review within 45 days of the filing of the Reports and Plans. The Office of the Public Counsel (OPC) and any other interested parties have the same 45-day period in which to file comments.²

Staff requested, and was granted, additional time to file its report. Likewise, OPC requested, and was granted, additional time to file comments. Staff filed a report on the Reports and Plans on June 30. Staff reported that Evergy's 2023 Plans meet the minimum requirements of Commission Rule 20 CSR 4240-20.100(8)(B). Staff also reported that Evergy complied with RES requirements for its Reports for the 2022 compliance year, but Staff noted errors in Evergy's Reports. Evergy filed revised Reports on July 27, 2023.

On June 30, OPC filed comments on Evergy's Reports and Plans. OPC contends that nearly all of the RECs that Evergy used for RES compliance were already retired and, by not selling the RECs prior to their expiration, Evergy ratepayers lost \$5.5 million in REC revenue.

OPC contends that Evergy is not complying with the REC statute that limits the average retail rate increase permitted for RES compliance to one percent (1%). Further, OPC takes issue with the lack of details provided by Evergy in addressing each section

² 20 CSR 4240-20.100(8)(D).

of 20 CSR 4240-20.100(8)(A) and (B). OPC urges the Commission to find that Evergy is not in compliance with RES requirements.

Evergy responded to OPC's comments on August 8, contending that it has accurately provided the retail rate impact in its RES Reports and Plans and that they comply with RES requirements.

The Commission's regulation does not specify what, if any, action the Commission is to take regarding Evergy's Reports and Plans, and any alleged deficiencies therein, except to allow the Commission to direct the utility to provide additional information or to address any concerns or deficiencies identified in the comments.³ After considering the submitted comments, the Commission concludes that no further order from the Commission is appropriate at this time.

The Commission, however, will grant Evergy the requested variance from Commission Rule 20 CSR 4240-20.100(8)(A)1.I.(V). Staff recommends the Commission grant this variance because meter reading information is not provided by the vendors from which Evergy purchases RECs.

THE COMMISSION ORDERS THAT:

1. Evergy will not be required to provide additional information or to address any concerns or deficiencies.

2. Evergy is granted a limited variance from the requirement of Commission Rule 20 CSR 4240-20.100(8)(A)1.I.(V) that meter readings used for calculation of the payments for RECs by the electric utility to renewable energy resources not owned by the electric utility. Invoices from the resource may be used in lieu of meter readings that were unavailable to Evergy.

³ 20 CSR 4240-20.100(8)(F).

3. This order shall be effective on November 3, 2023.
4. This file shall be closed on November 4, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Seyer, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Establishment of a	)	
Working Case Regarding FERC Order 2222	)	
Regarding Participation of Distributed Energy	)	<u>File No. EW-2021-0267</u>
Resource Aggregators in Markets Operated	)	
by Regional Transmission Organizations and	)	
Independent System Operators	)	

ORDER PARTIALLY MODIFYING THE COMMISSION'S 2010 ORDER REGARDING ARCs

ELECTRIC

§1. Generally

§9. Jurisdiction and powers of the State Commission

§46. Relations between connecting companies generally

Stakeholders requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers.

§1. Generally

§9. Jurisdiction and powers of the State Commission

§46. Relations between connecting companies generally

The Commission lifted a portion of a previously ordered prohibition against aggregators of retail customers (ARCs) to allow commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an ARC.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day
of October, 2023.

In the Matter of the Establishment of a	)	
Working Case Regarding FERC Order 2222	)	
Regarding Participation of Distributed Energy	)	<u>File No. EW-2021-0267</u>
Resource Aggregators in Markets Operated	)	
by Regional Transmission Organizations and	)	
Independent Systems Operators	)	

**ORDER PARTIALLY MODIFYING THE
COMMISSION'S 2010 ORDER REGARDING ARCs**

Issue Date: October 12, 2023

Effective Date: December 11, 2023

The Commission opened this working file to receive input and determine how the Commission may best respond to the changes that will result from implementation of the Federal Energy Regulatory Commission's (FERC) Order No. 2222,¹ and to review the Commission's current practices in the areas affected by that order. Initial comments in March and April of 2021 requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers (2010 Order).² After review, in this order, the Commission lifts a portion of the

¹ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020).

² File No. EW-2010-0187, *Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers* (issued March 31, 2010).

prohibition, as described herein, to allow larger commercial and industrial (C&I) customers to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC). The other portions of the opt-out contained in the 2010 Order remain in place, except as specified herein.

History of FERC Orders Relating to Aggregators

In 2008, FERC issued Order No. 719, directing Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to amend their wholesale market rules to allow ARCs to bid demand response resources from retail customers directly into the RTO and ISO markets, unless the laws or regulations of the relevant retail electric regulatory authority (RERRA) do not permit a retail customer to participate.³ In the rule adopted by FERC, RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of customers of utilities that distribute more than four million megawatt-hours in the previous fiscal year, where the RERRA prohibits ARCs from doing so.⁴ This aspect of FERC's rule is commonly known as the state "opt-out" provision. In its 2010 Order, the Commission exercised its opt-out authority and temporarily prohibited the load reductions of customers of the Missouri electric utilities regulated by the Commission from being transferred to the ISO or RTO markets directly by retail customers or third-party ARCs.

In 2020, FERC issued Order No. 2222. Order No. 2222 directed RTOs and ISOs to amend their market rules to remove barriers to the participation of distributed energy

³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009). The term "relevant electric retail regulatory authority" (RERRA) means the entity that establishes retail electric prices and any retail competition policies for customers, such as the state public utility commission. Order No. 719-A at P. 154.

⁴ Order 719-A at P. 51.

resource aggregators in the capacity, energy, and ancillary service markets operated by RTOs/ISOs. Order No. 2222 defines a Distributed Energy Resource (DER) broadly as “any resource located on the distribution system, any subsystem thereof or behind a customer meter.”⁵ Technologies include, but are not limited to, electric storage resources, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment.⁶ Importantly, unlike Order No. 719, Order No. 2222 does not allow RERRAs such as the Commission to broadly prohibit DERs from participating in the regional wholesale markets.⁷ The two RTOs operating in Missouri, the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP), have submitted tariff revisions pursuant to Order No. 2222. Those revised tariffs are awaiting final FERC approval.

Proceedings in This Docket

In February 2021, the Commission issued an order inviting comments on how the Commission should respond to Order No. 2222. In responsive comments, utilities highlighted several areas of potentially significant state-level impacts where Commission coordination and oversight may be required to implement Order No. 2222, including ARC registration procedures, avoiding double counting, metering and telemetry, consumer protection, data sharing and communication, cost allocation and recovery issues, and the effects of ARCs on distribution utility operations.⁸ Other stakeholders urged the

⁵ Order No. 2222 at P. 114.

⁶ *Id.*

⁷ *Id.* at P. 58.

⁸ EW-2021-0267. See e.g., *Evergy Missouri Metro’s and Evergy Missouri West’s Response to Order Directing Comments* (March 31, 2021); *Ameren Missouri’s Response to Order Opening A Working Case* (March 31, 2021); *Liberty’s Supplemental Response to Commission Order*, (April 16, 2021).

Commission to lift its 2010 Order prohibiting retail customers from participating in ARCs as part of its investigation in this docket.⁹

On August 4, 2021, the Commission issued an order providing stakeholders an opportunity to comment on whether and to what extent modifications should be made to the 2010 temporary ban on ARCs to allow demand response load of C&I customers of Commission-jurisdiction utilities to participate in RTO markets.¹⁰ Utility comments requested the Commission leave the 2010 Order in place until Commission rules and utility tariffs undergo significant review and revision.¹¹ Other stakeholders asked the Commission to modify its 2010 Order, noting that ARCs participating in wholesale markets are regulated by FERC, and that both MISO and SPP have regulations in place governing ARCs.¹² These stakeholders also emphasized that ARCs have participated in wholesale markets in other states without comprehensive state-level rule or tariff revisions.¹³ Specifically, Walmart and The Office of the Public Counsel requested the Commission lift its prohibition for C&I customers to allow these large, sophisticated commercial entities to take advantage of opportunities to participate in the wholesale markets.¹⁴ Public Counsel asked the Commission to maintain the prohibition on residential customers participating with ARCs until questions about consumer protection could be addressed.¹⁵

⁹ EW-2021-0267, *Voltus Comments* (March 31, 2021); *Renew Missouri's Comments* (March 31, 2021); *Comments of Midwest Energy Consumers Group* (March 31, 2010).

¹⁰ EW-2021-0267, *Order Offering an Opportunity to Comment Regarding Modification of Temporary Ban on Aggregators for Commercial and Industrial Customers* (August 4, 2021).

¹¹ EW-2021-0267, *Ameren Missouri's Response* (Sept. 1, 2021); *Evergy Missouri Metro's and Evergy Missouri West's Response* (Sept. 1, 2021).

¹² EW-2021-0267, *Voltus Comments* (Sept. 1, 2021); *Comments of CPower* (Sept. 1, 2021); *Voltus Reply Comments* (Sept. 28, 2021).

¹³ EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021).

¹⁴ EW-2021-0267, *Public Counsel Comments* (Sept. 1, 2021); *Comments of Walmart* (Sept. 1, 2021).

¹⁵ EW-2021-0267, *Public Counsel Comments* (Sept. 1, 2021).

In February 2022, the Commission announced receipt of a grant from the United States Department of Energy to provide technical assistance to the Commission in addressing the state-level regulatory challenges presented by Order No. 2222. The grant resulted in a report authored by Lawrence Berkeley National Laboratories (LBNL Report) describing how various states had approached demand response ARCs after FERC issued Order No. 719.¹⁶ On May 24, 2023, the Commission issued an order submitting the LBNL Report into this docket and seeking additional stakeholder comments on a possible modification of the 2010 Order for C&I customers. The Commission also conducted a workshop on C&I demand response on July 10, 2023.

Discussion

Based on all of the information in this docket, the Commission finds it appropriate to modify its 2010 Order to allow C&I customers of Commission-jurisdictional electric utilities with demands of 100 kilowatts (kW) or greater to transfer demand response load reductions to RTO markets directly or through third-party ARCs under the specific conditions described in this order. A customer with multiple sites under the same corporate ownership may aggregate multiple sites within an electric utility's service area to meet this minimum size requirement. In addition, this modification allowing C&I customers to participate in wholesale demand response programs does not include C&I customers participating in retail demand response programs. The Commission will continue to evaluate dual participation for future consideration.

This partial modification of the 2010 Order provides larger commercial and industrial customers the opportunity to participate in wholesale demand response

¹⁶ EW-2021-0267, Lawrence Berkeley National Laboratory Report: *Regulation of Third-Party Aggregation in the MISO and SPP Footprints*, Forrester, Triedman, Kozel, Brooks, Cappers (April 2023).

programs. Walmart and other companies work with aggregators in other states, and this modification provides those companies the same opportunities for their locations in Missouri.¹⁷ As Public Counsel noted, demand response can lead to lower wholesale electricity prices, which benefits all customers.¹⁸ Wholesale demand response cost-effectively enhances reliability and helps mitigate grid emergencies during severe weather.¹⁹ In addition, this partial modification of the 2010 Order will allow the Commission and utilities to gain valuable experience with ARCs as FERC moves toward implementation of Order No. 2222. Comments and stakeholder presentations emphasized the complexity of state-level issues raised by Order No. 2222, and the value of practical experience with ARCs in analyzing possible responses to these issues and crafting appropriate policies.²⁰ As noted previously, Order No. 2222 does not permit state regulators to opt out of DER aggregations, and FERC is considering whether to eliminate the demand response opt-out provision established under Order No. 719.²¹ Therefore, it is appropriate to make this partial modification now, so that the Commission can gain practical experience with ARCs while maintaining the opt-out for smaller commercial and all residential customers, prior to potential FERC action removing the state opt-out provision of its regulations.

¹⁷ EW-2021-0267, *Comments of Walmart*, (Sept. 1, 2021); *Comments of Walmart* (June 22, 2023).

¹⁸ EW-2021-0267, *Public Counsel's Comments* (Sept. 1, 2021); *Public Counsel's Additional Comments* (June 22, 2023).

¹⁹ EW-2021-0267, *Voltus Comments* (Sept. 1, 2021).

²⁰ EW-2021-0267, *Evergy Missouri Metro's and Evergy Missouri West's Response* (March 31, 2021); *Ameren Missouri's Response* (March 31, 2021) (describing the complexity of DER); *Voltus Reply Comments* (Sept. 28, 2021); *Notice of Workshop Presentations* (July 12, 2023), *DR Aggregation in Michigan*, slide 23, noting the Michigan PSC's conclusion that a limited modification of its opt out to allow large customers to join ARCs "will allow parties to gain experience with bundled load aggregation while introducing the least amount of issues."

²¹ FERC Docket RM21-14, *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198, Notice of Inquiry (March 18, 2021). FERC noted that significant legal, policy and technological developments since Order No. 719 may warrant reconsideration of the demand response opt out. P. 2.

The Commission agrees with comments about the complexity of potential impacts associated with aggregations of energy-injecting DER such as rooftop solar or electric vehicles under Order No. 2222.²² The Commission intends this limited modification of its 2010 Order to provide experience with demand response ARCs while minimizing the impacts and burdens on the utilities. As the LBNL Report indicates, experience in other states indicates that ARCs can operate in vertically integrated states without comprehensive state-level requirements beyond those in place at the RTOs.²³ The Commission agrees that more work needs to be done before lifting the opt-out for smaller commercial and residential customers due to the complexity of the issues specific to those smaller entities. The Commission anticipates that the experience gained through this modification will assist all stakeholders in developing a policy framework for ARCs going forward. The Commission also notes there is no provision in this Order which requires C&I customers or ARCs to take advantage of the partial modification in this Order.

Wholesale demand response has evolved since the Commission issued its 2010 Order. Both MISO and SPP have established procedures and regulations governing ARCs that address many of the issues raised in this docket.²⁴ For example, both MISO and SPP have registration procedures that require ARCs to provide information about the customers that seek to participate.²⁵ Both RTOs inform the applicable utility and RERRA of the registration that has been submitted for participation as an ARC and allow time for

²² EW-2021-0267, *Ameren Missouri's Response* (Sept. 1, 2021); *Evergy Missouri Metro's and Evergy Missouri West's Response* (Sept. 1, 2021); *Public Counsel's Comments* (Sept. 1, 2021).

²³ EW-2021-0267, *LBNL Report* pgs. 7, 10; *Reply Comments of Voltus* (Sept. 28, 2021).

²⁴ EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021); *Notice of Workshop Presentations* (July 12, 2023). See *ARC and Demand Response Resource Participation in MISO Markets*, slides 7-8; *Demand Response in the SPP Market*, slides 4-8.

²⁵ EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021); SPP Tariff Attachment AE Sections 2.2, 2.6 and 2.7; Market Protocols for SPP Integrated Marketplace 6.1.4 and 6.1.5; MISO Business Practices Manual 026 Section 3.2.

objection to the inclusion of a retail customer in an aggregation, which provides visibility into ARC activities and mitigates concerns about double counting the demand response resources.²⁶ Both MISO and SPP have dispute resolution procedures in place.²⁷ ARCs are also subject to state and federal consumer protection and privacy laws, and to the jurisdiction of the FERC Office of Enforcement, which seeks to prevent anticompetitive conduct and threats to the nation's energy infrastructure, among other duties.²⁸

Regarding data governance and cybersecurity issues, both MISO and SPP rules include confidentiality provisions.²⁹ Voltus and CPower described how their technology is designed to protect against cybersecurity threats.³⁰ In addition, Missouri's utilities are utilizing Green Button functionality that should allow for secure transfer of customer data to third parties.³¹ As experience is gained with ARCs in Missouri, all stakeholders will be able to raise issues in this working docket or in other dockets for Commission consideration.

THE COMMISSION ORDERS THAT:

1. Demand response load reductions of C&I customers, served by one of the four Missouri electric utilities regulated by the Commission, that meet the 100kW minimum size requirement and that are not participating in a retail demand response

²⁶ *Id.* See also *Voltus Reply Comments* (Sept. 28, 2021).

²⁷ EW-2021-0267, *Voltus Comments* (June 22, 2023); *Comments of CPower* (June 22, 2023); SPP Tariff Attachment AE, Section 10.3 and SPP Tariff Section 12; Integrated Marketplace Protocols 4.5.15; MISO Business Practice Manual 023-Alternative Dispute Resolution.

²⁸ EW-2021-0267, *Voltus Comments* (June 22, 2023).

²⁹ EW-2021-0267, *Notice of Workshop Presentations* (July 12, 2023). *ARC and Demand Response Resource Participation in MISO Markets*, slide 7; *Demand Response in the SPP Market*, slide 7. See MISO Business Practice Manual 001 6.3.13; SPP Tariff Attachment AE, Section 11.

³⁰ EW-2021-0267, *Comments of CPower* (June 22, 2023); *Voltus Comments* (June 22, 2023).

³¹ EW-2021-0267, *Public Counsel's Additional Comments*, (June 22, 2023).

program, may be transferred to the RTO markets directly by such retail customers or third-party ARCs.

2. Entities under the same corporate umbrella may aggregate multiple sites in the same utility service area to meet the 100 kW minimum size requirement.

3. In all other respects, the Commission's 2010 Order remains in place. Demand response load reductions of customers with demand less than 100 kW; and demand response load reduction of residential customers will continue to be prohibited from being transferred to the RTO markets directly by retail customers or third-party ARCs as stated in the Commission's 2010 Order.

4. This order shall become effective on December 11, 2023.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Own, Operate,)
Control, Manage, and Maintain a High)
Voltage, Direct Current Transmission Line)
and Associated Converter Station)

File No. EA-2023-0017

REPORT AND ORDER

CERTIFICATES

§6. Jurisdiction and powers of the State Commission

§11. When a certificate is required generally

§42. Electric and power

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

§6. Jurisdiction and powers of the State Commission

§42. Electric and power

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

§21. Grant or refusal of certificate generally

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.1. Public interest

§42. Electric and power

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit**§42. Electric and power**

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.”

ELECTRIC**§3. Certificate of convenience and necessity**

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§3. Certificate of convenience and necessity

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.”

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

§3. Certificate of convenience and necessity**§9. Jurisdiction and powers of the State Commission**

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

§3. Certificate of convenience and necessity**§9. Jurisdiction and powers of the State Commission**

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

PUBLIC UTILITIES**§2. Nature of****§7. Jurisdiction and powers of the State Commission**

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

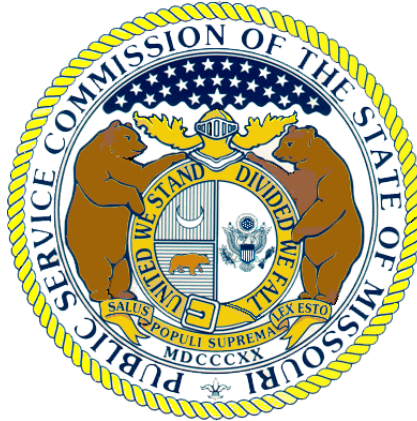
§9. Jurisdiction and powers of local authorities**§15. Eminent domain**

The Commission found that condemnation proceedings are governed by Chapter 523, RSMo, and are the purview of the state courts. The process includes protections for landowners including, a court review of whether the company negotiated in good faith; the requirement for applications filed after August 28, 2022, for payment for agricultural or horticultural land at 150% of fair value, and Section 523.265, RSMo (2016), which allows a landowner to propose alternate locations.

§15. Eminent domain

The Commission found that Section 523.277, RSMo (2016) created the Office of Ombudsman for Property Rights, appointed by the Public Counsel, to “assist citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures.”

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Own, Operate,)
Control, Manage, and Maintain a High)
Voltage, Direct Current Transmission Line)
and Associated Converter Station)

File No. EA-2023-0017

REPORT AND ORDER

Issue Date: October 12, 2023

Effective Date: November 11, 2023

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Grain Belt Express LLC for :)
 an Amendment to its Certificate of Convenience and :)
 Necessity Authorizing it to Construct, Own, Operate, :) **File No. EA-2023-0017**
 Control, Manage, and Maintain a High Voltage, Direct :)
 Transmission Line and Associated Converter Station :)

REPORT AND ORDER

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CHIEF REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On August 24, 2022, Grain Belt Express LLC (Grain Belt) filed an application with the Commission, pursuant to Section 393.170.1, RSMo,¹ 20 CSR 4240-2.060 and 20 CSR 4240-20.045, to “amend [the] existing certificate of convenience and necessity”² (CCN) granted to Grain Belt in File No. EA-2016-0358.³ The current application requests authority “to construct, install, own, operate, maintain, and otherwise control and manage an approximately 800-mile, overhead, multi-terminal ± 600 kilovolt (kV) high-voltage, direct current (HVDC) transmission line and associated facilities including converter stations and alternating current (AC) connector lines (the “Project”).”⁴

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Norman Fishel, Gary and Carol Riedel, Dustin Hudson, Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (collectively referred to as the “Missouri Landowners Alliance” or “MLA”); David and Patricia Stemme; Union Electric Company d/b/a Ameren Missouri (Ameren Missouri); Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission (“MEC” and formerly known as “MJMEUC”); Renew Missouri Advocates

¹ All statutory references are to the Missouri Revised Statutes (2016), as revised, unless otherwise noted.

² Although the application referenced an amendment of its prior certificate, the Commission treats this application as a request for a new certificate pursuant to 393.170.1, RSMo, for the Tiger Connector, relocated converter station, and the increased capacity of the transmission line.

³ Exhibit 306, Report and Order on Remand (issued March 20, 2019). The Report and Order on Remand granted Grain Belt a CCN to construct, own, operate, control, manage, and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County (referred to herein as the “Original Project”).

⁴ File No. EA-2023-0017, *Application to Amend Existing Certificate of Public Convenience and Necessity*, (filed August 24, 2023), page 1.

d/b/a Renew Missouri (Renew Missouri); William W. Hollander and Amy Jo Hollander; Sierra Club; Clean Grid Alliance; Associated Industries of Missouri; and Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Corn Growers Association, and Missouri Soybean Association (collectively referred to as the "Agriculture Associations").

The Commission conducted three public hearings to receive comments from the general public.⁵ The Commission held an evidentiary hearing on June 5-8, 2023.⁶ On June 26, 2023, the Commission overruled pending objections to admission #7 and Exhibit 307 and admitted those items into the evidentiary record. The parties submitted initial briefs on July 7, 2023, and reply briefs on July 14, 2023.

During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues⁷ previously identified by the parties:

1. Does the evidence establish that the following amendments to the Certificate of Convenience and Necessity ("CCN") held by Grain Belt Express LLC ("Grain Belt Express") are "necessary or convenient for the public service" within the meaning of that phrase under section 393.170, RSMo:
 - a. Relocating the Missouri converter station from Ralls County to Monroe County and increasing the capacity of the Missouri converter station from 500 MW to 2500 MW.

⁵ Transcript, Vols. 3-5. Two public hearings were held virtually via WebEx video and telephone conference and one local public hearing was held in Mexico, Missouri.

⁶ Transcript, Vols. 7-12.

⁷ Issue 3 presented by the parties in their *Joint List of Issues, Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements*, (filed May 22, 2023), was withdrawn by Grain Belt prior to the evidentiary hearing and therefore was not litigated. That issue was:

Should the Commission approve a modification of Ordering Paragraph 5 in the Report & Order on Remand in Case No. EA-2016-0358, such that easements obtained by means of eminent domain must be returned to the fee simple title holder if Grain Belt Express LLC does not satisfy the Financing Conditions within seven years, rather than five years, from the date that such easement rights are recorded with the appropriate county recorder of deeds?

- b. Relocating the AC connector line (the “Tiger Connector”) from Ralls County to Monroe, Audrain, and Callaway Counties.
 - c. Constructing the Project in two phases.
 - i. If the Commission determines that constructing the project in two phases is “necessary or convenient for the public service,” should the Commission approve a modification to the “Financing Conditions,” as set forth in Section I of Exhibit 1 to the *Report & Order on Remand* in Case No. EA-2016-0358, to allow for constructing the Project in two phases?
 - 2. Should the Commission approve a modification of the Landowner Protocols, as referenced and incorporated into the *Report & Order on Remand* in Case No. EA-2016-0358, to modify the compensation package offered to Tiger Connector landowners?
- * * *
- 3. If the Commission approves any or all of the foregoing amendments, what conditions, if any, should the Commission impose?

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

A. Project Description

1. In Commission File No. EA-2016-0358, Grain Belt Express Clean Line LLC was granted authority with conditions to construct, own, operate, control, manage, and maintain a HVDC electric transmission facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County pursuant to the *Report and Order on*

Remand (the “Original CCN Order” and the authority granted will be referred to herein as the “Original CCN”) pursuant to Section 393.170.1, RSMo.⁸

2. In File No. EM-2019-0150, the Commission approved the acquisition of Grain Belt Express Clean Line LLC by Invenergy Transmission LLC. The entity name changed in Commission File. No. EN-2020-0385 to Grain Belt Express LLC (Grain Belt⁹).¹⁰

3. Grain Belt is a limited liability company organized under the laws of the State of Indiana. Grain Belt is a wholly-owned subsidiary of Invenergy Transmission LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Invenergy Renewables LLC. Invenergy Renewables LLC is also a Delaware limited liability company.¹¹

4. Grain Belt filed the current application for a CCN pursuant to Section 393.170.1, RSMo, 20 CSR 4240-2.060, and 20 CSR 4240-20.045 requesting to amend its Original CCN.¹²

5. The transmission line proposed to be constructed by Grain Belt in the original application for CCN was an approximately 780-mile, overhead, multi-terminal +600 kilovolt (kV) high-voltage, direct current (HVDC) transmission line and associated facilities (collectively, the “Original Project”).¹³

⁸ Exhibit 306, Report and Order on Remand (issued March 20, 2019). *See also*, Exhibit 1, Direct Testimony of Shashank Sane, p. 6.

⁹ As Grain Belt Express Clean Line LLC and Grain Belt Express LLC are essentially the same company for purposes of these applications, they may be referred to interchangeably in this order.

¹⁰ Ex. 1, Sane Direct, pp. 6-7.

¹¹ Ex. 1, Sane Direct, p. 3.

¹² Ex. 1, Sane Direct, p. 4.

¹³ Ex. 306, Report and Order on Remand, paragraph 4.

6. The Missouri portion of the Original Project would have been located in the Missouri counties of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls.¹⁴

7. The Original Project would have delivered 500 megawatts (MW) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.¹⁵

8. In the current application, Grain Belt proposes to construct, install, own, operate, maintain, and otherwise control and manage an approximately 800-mile, overhead, multi-terminal +/- 600 kilovolt kV HVDC transmission line, and associated facilities including converter stations and alternating current (AC) connector lines in two phases (collectively, the “Project”).¹⁶

9. The Project as proposed will have three converter stations. One converter station will be located in western Kansas, where wind-generating facilities will connect to the transmission line via AC lines. The two other converter stations in eastern Missouri and eastern Illinois will deliver electricity to the AC grid through interconnections with transmission owners in the systems of the Midcontinent Independent System Operator, Inc. (MISO), Southwest Power Pool (SPP), and PJM Interconnection, LLC (PJM).¹⁷

10. Phase I of the Project will interconnect to ITC Great Plains’ Saddle 345 kV substation, which will break the 345 kV double circuit line between the Clark County substation and the Spearville/Ironwood substations in Ford County in southwestern

¹⁴ Ex. 306, Report and Order on Remand, para. 5.

¹⁵ Ex. 306, Report and Order on Remand, para. 5.

¹⁶ Ex. 1, Sane Direct, p. 4.

¹⁷ Ex. 7, Rodriguez Direct, p. 7.

Kansas, near Dodge City.¹⁸ From the converter station near Dodge City, Kansas, the HVDC transmission line will cross approximately 370 miles to the Kansas-Missouri border.¹⁹ The HVDC transmission line will cross the Kansas River south of St. Joseph and enter Missouri. From there, the HVDC transmission line will traverse approximately 156 miles to a converter station in Monroe County, Missouri.²⁰

11. In Phase I of the Project, Grain Belt proposes to construct the Missouri converter station in Monroe County instead of Ralls County. An AC tie line will move from Ralls County to Monroe, Audrain, and Callaway Counties. The AC tie line, known as the “Tiger Connector,” will be approximately 40 miles, traversing south from the converter station in Monroe County, through Audrain County, and terminating in Callaway County at points of interconnection with the MISO system along the Ameren Missouri 345 kV AC transmission line connecting the McCredie substation and the Montgomery substation.²¹ The proposed converter station will also interconnect with the Associated Electric Cooperative Incorporated (AECI) system at the McCredie 345 kV substation.²²

12. The Project will also change the size of the Missouri converter station from 500 MW to 2500 MW.²³ Thus, Phase I will deliver 2,500 MW into Missouri, including 1,500 MW into MISO and an additional 1,000 MW into AECI.²⁴

13. Phase II of the Project will comprise construction from the converter station in Monroe County approximately 58 miles in Missouri to the Illinois border.²⁵ Phase II will

¹⁸ Ex. 7, Rodriguez Direct, p. 6.

¹⁹ Ex. 7, Rodriguez Direct, p. 6.

²⁰ Ex. 7, Rodriguez Direct, p. 6.

²¹ Ex. 1, Sane Direct, p. 8; and Ex. 7, Rodriguez Direct, pp 6-7.

²² Ex. 1, Sane Direct, p. 8; and Ex. 7, Rodriguez Direct, pp 6-7.

²³ Ex. 1, Sane Direct, p. 8.

²⁴ Ex. 3, Sane Surrebuttal, p. 17.

²⁵ Ex. 7, Rodriguez Direct, pp. 6-7.

continue approximately 207 miles through Illinois to the Indiana border terminating at the substation in Sullivan County, Indiana, and will deliver an additional 2,500 MW into the PJM markets.²⁶

14. The Project will not modify the route of the HVDC portion of the transmission line in Missouri.²⁷

15. The target date is to start Phase II construction approximately 18 months after the start of Phase I construction.²⁸

16. The Project will utilize voltage sourced converter (VSC) technology, which is the same technology that enables connection to islanded off-shore wind. This technology is a significant upgrade from the line commutated converter (LCC) HVDC technology proposed in the Original CCN. Unlike the LCC HVDC technology, the Project utilizing the VSC HVDC technology will not require a connection to the existing grid in SPP, but by connecting to the system, it will allow for a more robust operation and for the ability to provide emergency energy and ancillary services in the future, such as voltage control and black-start capabilities, if required. The exchange to the network will be tightly controlled by the HVDC system, to ensure minimal impact to the grid. Another advantage of the modern VSC technology is that it does not require commutation to take place as the LCC technology did. The design of the converter allows for current flow in any direction by controlling the voltage of the converter.²⁹

17. The HVDC technology of the Project is still the most cost-effective and efficient way to move large amounts of electric power over long distances and can transfer

²⁶ Ex. 3, Sane Surrebuttal, p. 17; and Ex. 7, Rodriguez Direct, pp. 6-7.

²⁷ Ex. 19, Chandler Direct, p. 8.

²⁸ Ex. 9, White Direct, p. 16.

²⁹ Ex. 7, Rodriguez Direct, p. 8.

significantly more power with lower line losses over longer distances than comparable AC lines.³⁰

18. AC lines used for long-haul applications require more switching and substations and take more lines to move large amounts of power over a long distance than HVDC lines.³¹

19. The HVDC design will provide a congestion-free delivery source of power, unlike using an interconnected AC system to move power.³²

20. The Project's development, construction, and operations costs would be borne by Grain Belt's investors and the transmission customers. The Project's costs would not be recovered through the cost allocation process of MISO, PJM, or SPP.³³

21. The Project is a participant-funded, "shipper pays" transmission line. Grain Belt would recover its capital costs by entering into voluntary, market-driven contracts with entities that want to become transmission customers of the Project.³⁴

22. This pricing arrangement is typical for transmission lines operated by the transmission owner members of SPP, MISO and PJM. It is also similar to the contractual arrangements for natural gas and other pipelines.³⁵

23. In connection with its grant of authority by the Federal Energy Regulatory Commission (FERC) to negotiate rates for transmission service, Grain Belt Express has committed to turn over functional control of the Project, including scheduling responsibilities, to an RTO (which will be SPP, MISO or PJM) and to operate the

³⁰ Ex. 7, Rodriguez Direct, pp. 8-9; and Ex. 306, Report and Order on Remand, para. 10.

³¹ Ex. 7, Rodriguez Direct, p. 9.

³² Ex. 7, Rodriguez Direct, p. 9.

³³ Ex. 6, Shine Surrebuttal, p. 13.

³⁴ Ex. 5, Shine Direct, p. 9; Ex. 6, Shine Surrebuttal, p. 13.

³⁵ Ex. 5, Shine Direct, p. 9.

transmission line pursuant to an open access transmission tariff (OATT) that would be filed with and subject to the jurisdiction of FERC under the Federal Power Act and FERC regulations.³⁶

24. Under FERC requirements, Grain Belt has the authority to charge negotiated rates for the capacity on the Grain Belt line and is required to solicit potential buyers of capacity through an open solicitation process.³⁷

25. Grain Belt customers would consist principally of wind energy producers in western Kansas and wholesale buyers of electricity, such as utilities, municipalities, and commercial and industrial customers.³⁸

26. The Project will cross approximately 578 parcels in Phase 1 in Missouri, of which approximately 366 easements have been voluntarily obtained.³⁹

27. Grain Belt has filed 19 condemnation cases in Missouri, of which approximately six have been concluded in negotiated settlement and four through the court proceedings.⁴⁰

28. Grain Belt has acquired 87 percent of the easements for the transmission line in Phase 1 under voluntary agreement, of which approximately 70 percent are for Missouri landowners. Approximately 25 to 30 percent of the easements in Missouri for Phase 2 have been acquired.⁴¹

29. Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners. The agreement includes the right to construct, operate,

³⁶ Ex. 9, White Direct, p. 20.

³⁷ Transcript, Vol. 7, pp. 176-177.

³⁸ Ex. 1, Sane Direct, pp. 15, 20, 34-35.

³⁹ Tr. Vol. 10, p. 644-645 and 675-676.

⁴⁰ Tr. Vol. 10, pp. 676-677.

⁴¹ Tr. Vol. 10, pp. 645-646 and 684-685.

repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line.⁴²

30. The easement agreement limits the landowner's legal rights and use of the easement property, including prohibiting any landowner activity that would interfere with Grain Belt's use of the easement.⁴³

B. Need for the Project

31. The Commission previously found there was a need for the Original Project.⁴⁴

32. The need for MEC and its customers to obtain energy from the Project still exists as verified by MEC's Chief Markets Officer Rebecca Atkins,⁴⁵ Chief Executive Officer John Twitty,⁴⁶ and Chief Electric Operations Officer John Grotzinger.⁴⁷

a. Demand

33. MEC witness John Grotzinger testified credibly that the Project will provide MEC's members with needed affordable renewable energy.⁴⁸

34. MEC is a joint action agency organized to promote efficient wheeling, pooling, generation, and transmission arrangements to meet the energy requirements of municipal utilities in the State of Missouri.⁴⁹

35. MEC has 72 Missouri municipal utility members and advisory member municipal utilities in Arkansas. Together, MEC's members serve over 350,000 Missouri

⁴² Ex. 19, Chandler Direct, Schedule KC-4.

⁴³ Ex. 19, Chandler Direct, Schedule KC-4.

⁴⁴ Ex. 306, Report and Order on Remand.

⁴⁵ Ex. 701, Atkins Rebuttal, pp. 3 and 8.

⁴⁶ Ex. 700, Twitty Rebuttal, p. 7.

⁴⁷ Ex. 702, Grotzinger Rebuttal, pp. 4, 12, and 14.

⁴⁸ Ex. 702, Grotzinger Rebuttal, p. 4.

⁴⁹ Ex. 700, Twitty Rebuttal, p. 3.

electric customers and over 500,000 total electric customers.⁵⁰ Their combined peak load is approximately 2,600 MW.⁵¹

36. MEC owns generation that supplies some of its members' energy needs, but it has primarily relied on transportation service agreements (TSAs) and purchase power agreements (PPAs) with other utilities to provide renewable energy to its members.⁵²

37. MEC has loads and/or resources located within the transmission systems of several members of MISO, SPP, and the Associated Electric Cooperative Incorporated (AECI). MEC has been successful in obtaining ownership in large base load and intermediate generators to serve its members and continues to seek new opportunities. MEC has an interest in and need for low-cost energy, and in renewable energy, for consumption by its members.⁵³

38. The Missouri Public Energy Pool (MoPEP) is a group of 35 Missouri cities for which MEC provides full requirements for wholesale energy, capacity, and ancillary services.⁵⁴

39. MEC's wholesale customers, including MoPEP, have a demand for affordable renewable energy, as some are leaders within Missouri in providing renewable energy to their customers.⁵⁵

40. On June 2, 2016, MEC entered into a TSA with Grain Belt. Under the agreement, MEC agreed to purchase a minimum of 100 MW and up to 200 MW of firm

⁵⁰ Ex. 700, Twitty Rebuttal, p. 3.

⁵¹ Ex. 700, Twitty Rebuttal, p. 3.

⁵² Ex. 700, Twitty Rebuttal, pp. 3-4.

⁵³ Ex. 700, Twitty Rebuttal, p. 5.

⁵⁴ Ex. 700, Twitty Rebuttal, p. 4.

⁵⁵ Ex. 700, Twitty Rebuttal, p. 8.

transmission capacity rights on the Project from Grain Belt's western converter station in Ford County, Kansas to the converter station in Missouri for the benefit of its existing full-requirements pool members and other members. In addition, MEC agreed to purchase 25 MW of capacity (with the option to purchase another 25 MW) from the Missouri converter station to the Sullivan Substation in PJM. This allows MEC utilities the ability to directly make off-system sales into the PJM market and derive additional financial benefits.⁵⁶

41. The MEC contract remains in place and that demand for electricity supplied by the transmission line continues to grow.⁵⁷

42. The TSA between MEC and Grain Belt is affordable and will allow predictable, stable cost increases in transmission well into the future.⁵⁸

43. MEC also executed a PPA with Iron Star Wind Project, LLC (Iron Star), now with Iron Star's assignee, Santa Fe Wind Project, LLC (Santa Fe).⁵⁹ This PPA would allow low-cost renewable energy to flow across Grain Belt's transmission line and into MISO where MoPEP and individual MEC members can deliver that renewable energy to their customers.⁶⁰

44. MEC's agreements with Grain Belt and Santa Fe will allow low-cost renewable energy to flow into MISO and also into AECI.⁶¹

45. In December 2016, MoPEP committed to purchase 60 MW of wind energy over the Grain Belt transmission line.⁶²

⁵⁶ Ex. 700, Twitty Rebuttal, p. 4 and Schedule JT-3; and Ex. 702, Grotzinger Rebuttal, p. 4.

⁵⁷ Ex. 1, Sane Direct, p. 13.

⁵⁸ Ex. 700, Twitty Rebuttal, pp. 4-5 and Schedules JT-3, 4, 5, 6, and 7.

⁵⁹ Ex. 700, Twitty Rebuttal, p. 3 and Schedule JT-8, 9, and 10.

⁶⁰ Ex. 700, Twitty Rebuttal, p. 4.

⁶¹ Ex. 700, Twitty Rebuttal, p. 4 and 6.

⁶² Ex. 702, Grotzinger Rebuttal, p. 4, 6, and Schedule JG-11.

46. The following Missouri cities have contracted to purchase Kansas wind energy delivered over the Grain Belt transmission line: City of Kirkwood, 25 MW; City of Hannibal, 15 MW; City of Columbia, 35 MW; and City of Centralia, 1 MW. These contracts, when combined with the MoPEP agreement, commit at least 136 MW of wind energy available to MEC through its transmission service agreement with Grain Belt.⁶³

47. Other specific evidence of interest in transmission across Grain Belt's line can be found in Mr. Twitty's Highly Confidential – Competitive Rebuttal Testimony.⁶⁴

48. The demand from other MEC members for energy transmitted over the Grain Belt transmission line is expected to exceed the 64 MW remaining for subscription under the Grain Belt TSA and the Santa Fe PPA.⁶⁵

49. There is demand from MoPEP's 35 member cities and their customers for renewable energy. For example, the City of Columbia has a renewable portfolio standard that exceeds the Missouri Renewable Energy Standard. Other MoPEP customers continue to express a desire for more renewable energy.⁶⁶ Additionally, MoPEP offered 20 MW option at a small premium over other resources in its portfolio and it was quickly fully subscribed with additional demand unmet.⁶⁷

50. MoPEP previously had a contract with Illinois Power Marketing Company to provide 100 MW of coal energy and capacity that expired in 2021.⁶⁸ That contract was replaced by SPP combined-cycle natural gas generation, SPP wind generation capacity, and the Santa Fe PPA. The MISO Grain Belt portion of that replacement has been

⁶³ Ex. 702, Grotzinger Rebuttal, p. 5-6 and Schedules JG-12 and JG-13.

⁶⁴ Ex. 700(HC-C), Twitty Rebuttal, p. 6 and Schedule JT-12.

⁶⁵ Ex. 702, Grotzinger Rebuttal, p. 6.

⁶⁶ Ex. 702, Grotzinger Rebuttal, p. 7.

⁶⁷ Ex. 702, Grotzinger Rebuttal, p. 7.

⁶⁸ Ex. 306, Report and Order on Remand, FOF 29.

temporarily filled with higher-cost short-term energy purchases pending the full commercial operation of Grain Belt. The customers of the 35 MoPEP cities are paying the additional cost of these more expensive resources.⁶⁹

51. Industrial retail customers also have expressed demand for additional renewable energy.⁷⁰ This is demonstrated by the industrial wholesale customers placing renewable energy goals in their corporate procurement policies. The Project will help MoPEP's member cities to remain or become more attractive location for those industries.⁷¹

52. Large corporate energy customers accounted for 37% of all carbon free energy added to the grid since 2014. In 2021 corporate buyers procured 11 GW of carbon free energy power. The demand in 2022 and beyond is projected to exceed the record amount from 2021.⁷²

53. A number of businesses have expressed interest in buying renewable power. A non-exhaustive list of companies operating in Missouri are members of the Clean Energy Buyers Association and have made commitments to use renewable energy: 3M, Anheuser-Busch Companies, LLC, Burns & McDonnell, The Boeing Company, Cargill, Emerson, Dow, General Mills, Google LLC, GM, Ikea, Meta Platforms, Inc., Nestlé USA, Proctor & Gamble, T-Mobile, Occidental Petroleum Corporation, Unilever, and Walmart.⁷³

⁶⁹ Ex. 702, Grotzinger Rebuttal, p. 7.

⁷⁰ Ex. 702, Grotzinger Rebuttal, p. 8.

⁷¹ Ex. 702, Grotzinger Rebuttal, pp. 8-9.

⁷² Ex. 1, Sane Direct, p. 11.

⁷³ Ex. 1, Sane Direct, p. 15.

54. Several Missouri municipal governments, including Kansas City, St. Louis, Columbia, and University City, have also made pledges to increase use of renewable energy in city facilities.⁷⁴

55. Other credible sources showed a demand for the Project from outside of Missouri. Specifically, as of December 4, of 2021, 70% of the 30 largest U.S. electric and gas utilities have net-zero equivalent targets or were moving to comply with aggressive carbon reduction mandates. The majority of these utilities reside within the MISO and PJM footprints.⁷⁵ Additionally, a study commissioned by MISO to assess the clean energy goals of utilities within its footprint through 2040 showed that 28 have carbon reduction goals and 26 have renewable energy goals.⁷⁶ Also, the Tennessee Valley Authority requested up to 5,000 MW of carbon-free energy that must be operational by 2029. Because the Project will have the capability to deliver energy into MISO South via its AECL interconnection, it could be a potential transmission source for this additional energy need.⁷⁷

56. Both Ameren Missouri and Evergy have announced carbon emission reduction goals. These goals show there will be demand and a need to expand the delivery capability of the Original Project.⁷⁸

57. The Project is targeted for Phase I to be fully operational by the end of 2027.⁷⁹ This timeline is aligned to coincide with Ameren Missouri's and Evergy Missouri's milestones of significantly reducing fossil fuel generation and increasing renewable

⁷⁴ Ex. 1, Sane Direct, p. 15.

⁷⁵ Ex. 1, Sane Direct, pp. 15-16.

⁷⁶ Ex. 1, Sane Direct, p. 16.

⁷⁷ Ex. 1, Sane Direct, p. 16.

⁷⁸ Ex. 1, Sane Direct, p.13.

⁷⁹ Ex. 2, Sane Surrebuttal, p. 6.

energy generation sources by 2030.⁸⁰ In its 2022 Integrated Resource Plan (IRP) Ameren Missouri has set a target timeline of 2026 - 2030 to add 1,000MW of wind energy to their resource mix.⁸¹ Grain Belt will provide Missouri utilities with a superior generating resource pool with higher capacity factors, better availability during times of need and the geographic diversity necessary to balance potential extreme grid conditions in the SPP, AECI, and MISO regions.⁸²

58. Further evidence of demand was from Mr. Goggin who credibly testified that in his experience in Texas, parts of MISO, SPP, and California, over the last 15-plus years, every time there has been a proactive expansion of transmission to areas with high quality renewable resources, those transmission lines are typically immediately subscribed if not oversubscribed.⁸³

b. Increased Capacity – Decreased Cost of Renewable Energy

59. Increasing the flow of low-cost, high capacity factor energy will reduce power prices in the MISO and SPP markets, particularly in periods when local renewable resources in Missouri are operating at below-average levels.⁸⁴

60. A benefit of increasing the capacity of the transmission line is that MEC's Mid-Missouri Municipal Power Energy Pool (MMMPEP) may also take the opportunity to participate because of its proximity to AECI. MMMPEP could take some of the renewable

⁸⁰ Ex. 2, Sane Surrebuttal, pp. 6 and 15; and Ex. 9, White Direct, p. 15.

⁸¹ Ex. 2, Sane Surrebuttal, p. 6.

⁸² Ex. 2, Sane Surrebuttal, p. 6; and Ex. 600, Goggin pp. 6-7.

⁸³ Tr. Vol 12, p. 1002.

⁸⁴ Ex. 2, Sane Surrebuttal, p. 14 (referring to the PA Consulting Study and Ex. 3, Repsher Direct, pp. 10-11); Ex. 3, Repsher Direct, Schedule MR-2, pp. 12-13; Ex. 600, Goggin Rebuttal, pp. 5-6.; Ex. 306, Report and Order on Remand, FOF 43-44; and Tr. Vol. 12 at 980.

energy that Grain Belt would inject into that node, thus avoiding the need for a costly separate transmission path through MISO or the SPP.⁸⁵

61. Although the additions and modifications to the Project Grain Belt seeks may have altered MEC's analysis and some of the earlier numbers from when the Original CCN was granted, Grain Belt remains the best option for low cost renewable energy delivered into MISO. Across the MISO footprint, in the year 2028, Grain Belt's Project is projected to reduce the marginal energy component of the locational marginal price (LMP) on average by \$1.77/MWh, which savings applied to the MISO load will amount to over \$1.1 billion.⁸⁶

62. The LMPs at the nodes of particular interest to MEC had an annual average drop ranging from \$1.10/MWh to \$37.56/MWh after the injection of Grain Belt renewable energy into AECI and MISO.⁸⁷ Mr. Grotzinger credibly testified that he expected the benefits of Grain Belt to continue throughout the life of MEC's 20-plus year contract.⁸⁸

63. Grain Belt engaged PA Consulting Group, Inc. to analyze the market impacts of the Grain Belt transmission project. PA Consulting compiled the *Missouri Interstate Transmission Need: The Public Benefit of Grain Belt Express* report (the "PA Consulting Report"). PA Consulting's analysis conservatively assumes that only a fraction of generators in the queue will ultimately come online.⁸⁹

64. The PA Consulting Report and Mr. Repsher's conclusion is that expanding the Original Project to the Project will lower energy and capacity costs in Missouri by

⁸⁵ Ex. 702, Grotzinger Rebuttal, p. 6.

⁸⁶ Ex. 702, Grotzinger Rebuttal, pp. 4, 11, and 13.

⁸⁷ Ex. 702, Grotzinger Rebuttal, pp. 4 and 11-13.

⁸⁸ Ex. 702, Grotzinger Rebuttal, p. 4 and 14.

⁸⁹ Ex. 3, Repsher Direct, Schedule MR-2; and Ex.4, Repsher Surrebuttal, p. 4.

approximately 6.1% over the 2027-2066 period, resulting in over \$17.6 billion of savings for Missouri residents, on an undiscounted basis. The PA Consulting Report also found the Project is projected to reduce emissions of CO₂, SO₂, and NO_x in Missouri by 9.3%, 19.2%, and 17.2%, respectively, enhancing local utilities' abilities to meet their climate and reliability goals, while also delivering immediate local air quality and health benefits. Quantifying these emission reduction benefits to the state, Mr. Repsher's conclusion was that the Project could offer Missouri over \$7.6 billion in social benefits from 2027-66, in addition to the over \$17.6 billion in direct ratepayer savings in the energy and capacity costs over this same period—bringing the total cumulative benefit to over \$25.3 billion by 2066.⁹⁰

65. The Project will provide access to a greater volume of renewable resources and the resources from the Project will provide a better fit to local capacity needs than local solar resources.⁹¹ The most pressing capacity need is for winter peak capacity typically occurring from 7:00 a.m. to 8:00 a.m. during the winter.⁹² While solar does not have high capacity at that time of day, those early morning hours are typically the strongest for Kansas wind resources, providing on average 52% capacity factor.⁹³ When paired with solar, this increases to 61%.⁹⁴

66. These resources can provide year-round capacity value as well. When summer peak capacity from 4:00 p.m. to 6:00 p.m. is required, the wind and solar portfolio provided by the Project offers on average a 67% capacity factor.⁹⁵ The value of

⁹⁰ Ex. 3, Repsher Direct, p. 6 and Schedule MR-2, p. 4

⁹¹ Ex. 2, Sane Surrebuttal, p. 7.

⁹² Ex. 2, Sane Surrebuttal, p. 7.

⁹³ Ex. 2, Sane Surrebuttal, p. 7.

⁹⁴ Ex. 2, Sane Surrebuttal, p. 7.

⁹⁵ Ex. 2, Sane Surrebuttal, p. 7.

time-shifted solar in Kansas provides load carrying capacity that is superior to local solar because it better aligns with system peak. Mr. Sane credibly testified that 160 MW of solar in Kansas provides the same capacity value as 450 MW of local Missouri solar, saving Missouri ratepayers approximately \$600 million in avoided costs.⁹⁶

67. The Project can deliver wind from Kansas that is uncorrelated to solar production within MISO.⁹⁷ This relationship will reduce risk of supply shortfall and therefore reduce the need for backup generation.⁹⁸ The Project can also deliver solar energy from Kansas that will continue producing at a higher capacity factor for nearly two hours later than solar within Missouri, reducing the pace of ramping required in the evening.⁹⁹

68. The Project is needed because it will result in \$17.6 billion in savings to Missouri ratepayers and \$7.6 billion in social benefits,¹⁰⁰ compared to the projected \$5.7 billion cost of the Project.¹⁰¹

69. The annual cost savings to MEC member cities (not-for-profit utilities) that participate in the Project is likely to result in rate relief for the cities' customers, or investments in their systems.¹⁰²

c. Grid Stability, Resilience, and National Security

70. The Project will also increase grid stability. The HVDC converter, proposed to be located in Monroe County, can serve as a critical grid asset to ensure grid stability.

⁹⁶ Ex. 2, Sane Surrebuttal, p. 7.

⁹⁷ Ex. 1, Sane Direct, p. 20; and Ex. 2, Sane Surrebuttal, p. 8.

⁹⁸ Ex. 2, Sane Surrebuttal, p. 8.

⁹⁹ Ex. 2, Sane Surrebuttal, p. 8.

¹⁰⁰ Ex. 3, Repsher Direct, p. 6.

¹⁰¹ Tr. Vol. 9, pp. 346-349 and 374-375.

¹⁰² Ex. 700, Twitty Rebuttal, p. 7.

As more fossil (synchronous) generation is retired, the result is a transmission system with a lower short circuit ratio, which may be prone to instability.¹⁰³

71. Grain Belt also could provide black-start capability without dependency on local generation and onsite fuel.¹⁰⁴ The Project has this potential because of its technical capabilities: 1) voltage source converter technology, which can quickly reverse the direction of current, and 2) its converter stations capable of bidirectional flow.¹⁰⁵

72. The three DC/AC converter stations (one each in Kansas, Missouri, and Illinois) will have the capability to inject or withdraw capacity to or from different markets, providing reliability during periods of supply shortages.¹⁰⁶ The Project will provide Missouri with access to energy connected to SPP and PJM in addition to Grain Belt's resources.¹⁰⁷

73. These technical capabilities benefit national security because across four balancing authorities they provide outage protection, energy diversity, power flow control, interregional transfers, black-start support, and increased energy independence.¹⁰⁸ Serving as the backbone of the grid, HVDC can perform as both the extension cord bringing electricity to customers impacted by disruptive events and jumper cables needed to restart grids suffering from outages.¹⁰⁹ Witness Jonathon Monken, Principal at Converge Strategies, LLC, provided additional analysis about how the Project, including

¹⁰³ Ex. 2, Sane Surrebuttal, p. 8.

¹⁰⁴ Ex. 2, Sane Surrebuttal, pp. 8-9; Ex. 8, Rodriguez Surrebuttal, p. 13.

¹⁰⁵ Ex. 9, White Direct, pp. 4-5.

¹⁰⁶ Ex. 2, Sane Surrebuttal, p. 9.

¹⁰⁷ Ex. 2, Sane Surrebuttal, p. 9.

¹⁰⁸ Ex. 13, Monken Direct, p. 8.

¹⁰⁹ Ex. 9, White Direct, pp. 4-5.

the Tiger Connector, would enhance reliability and resiliency values with regard to national security.¹¹⁰

74. The Department of Defense has more than 500 installations and 300,000 buildings nationwide with a substantial dependence on private electricity infrastructure for maintaining and executing critical missions.¹¹¹ Executive Order 14057, “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,” indicates the Department of Defense has a target of procuring carbon-free power on a 24/7 basis to support national defense missions, which will require long-range, cross-regional transmission with enhanced controllability to meet its real-time demand.¹¹²

75. Grain Belt does not yet have authority from MISO to operate bidirectionally and has not requested or undertaken the incremental investment needed to allow for bidirectional operations.¹¹³ However, bidirectional power flow is inherent to the selected technology type and the contract between Grain Belt and Siemens (the converter station supplier) provides for delivery of bidirectional converter stations.¹¹⁴

76. Although registration, studies, and agreements are required to fully utilize black-start services, the Project will be operationally capable of providing black-start services.¹¹⁵

77. Extreme weather events, such as Winter Storm Uri and Winter Storm Elliot, have shown the need for greater interregional transmission capacity to allow greater

¹¹⁰ Ex. 13, Monken Direct, pp. 4-12 and Schedule JM-2.

¹¹¹ Ex. 1, Sane Direct, p. 19.

¹¹² Ex. 1, Sane Direct, p. 19.

¹¹³ Ex. 102, Eubanks Rebuttal, pp. 12-13.

¹¹⁴ Ex. 10, White Surrebuttal, pp. 4-5.

¹¹⁵ Ex. 8, Rodriguez Surrebuttal, p. 13; and Ex. 11, Petti Direct (adopted by Baker), Schedule AP-2, pp. 33-34.

sharing of energy across regions during periods of grid challenges.¹¹⁶ The approximately 530 miles between Grain Belt's Kansas and Missouri converter stations will mitigate these risks. It is unlikely that an extreme weather event affecting eastern Missouri will simultaneously affect western Kansas.¹¹⁷

78. The Project provides Missouri ratepayers with an insurance policy against extremely high energy prices and catastrophic loss of load situations that have affected multiple utilities in recent years. The HVDC line will also provide connectivity to the broader SPP market in Phase I and into PJM in Phase II.¹¹⁸

79. MISO estimated that new transmission pathways will result in a 16-hour reduction in loss of load every three years and a value of \$3,500/MWh of lost load. Applying the same assumptions to the new transmission pathways created by Grain Belt Express represents a savings of \$56 million every three years based on 1,000 MW of MISO interconnection. The MISO Independent Market Monitor (IMM) actually places a much higher value on the cost of lost load at \$23,000/MWh rather than the \$3,500/MWh used by MISO. Using the higher IMM cost, the value of mitigated lost load from Grain Belt Express is \$368 million every three years.¹¹⁹

80. Witness Anthony Petti, Managing Consultant at Guidehouse Inc., also provided evidence of the reliability and resiliency value provided by the Project.¹²⁰ For example, using projected injections from the Project and cost of new entry for generation capacity, Grain Belt estimated that the Project will mitigate additional reliability driven

¹¹⁶ Ex. 1, Sane Direct, pp. 17-19; and Ex. 2, Sane Surrebuttal, p. 10.

¹¹⁷ Ex. 2, Sane Surrebuttal, p. 9.

¹¹⁸ Ex. 2, Sane Surrebuttal, p. 10.

¹¹⁹ Ex. 2, Sane Surrebuttal, p. 10.

¹²⁰ Ex. 11, Petti Direct (adopted by Baker), pp. 6-7 and Schedule AP-2.

generation capacity investments of approximately \$526 million per year and approximately \$7.6 billion for the life of the Project (assuming an asset lifespan of 30 years and a discount rate of 6.057%) for a 5,000 MW line capacity.¹²¹ Of these total Project benefits, the savings generated by reduced procurement obligations were broken down by region in Table 9 of the Guidehouse Report. Using SPP's regional cost of new entry, the Project was shown to be capable of saving approximately \$85 million per year for AECI customers in Missouri and \$145 million per year for customers in MISO Load Resource Zones 4 through 7 (which includes Missouri).¹²²

81. The Guidehouse Report also estimated the influence of the Project over MISO's Planning Reserve Auction (PRA). MISO's PRA is designed to ensure Local Resource Zones have procured enough generation capacity to meet their respective Local Reserve Requirement and MISO Regions have met the Planning Reserve Margin Requirement for the year.¹²³ The Guidehouse Report estimated the Project will attribute an annual savings of \$410.9 million or a savings of \$346.0 million based upon a \$60/MW-day Auction Clearing Price (ACP) to MISO.¹²⁴ The portion of these annual savings benefitting Missouri would be approximately \$28 million to \$33 million of MISO PRA auction clearing price savings per year.¹²⁵

82. The Guidehouse Report also provides evidence that the Project will mitigate high energy prices during extreme weather events.¹²⁶ Guidehouse examined the frequency and impact of recent extreme weather events, including their impact on

¹²¹ Ex. 11, Petti Direct (adopted by Baker), p. 9.

¹²² Ex. 11, Petti Direct (adopted by Baker), p. 9.

¹²³ Ex. 11, Petti Direct (adopted by Baker), p. 10.

¹²⁴ Ex. 11, Petti Direct (adopted by Baker), p. 11.

¹²⁵ Ex. 11, Petti Direct (adopted by Baker), p. 11.

¹²⁶ Ex. 11, Petti Direct (adopted by Baker), pp. 7-8 and Schedule AP-2.

emergency energy prices, and estimated the potential benefit the Project could have provided during the scenarios.¹²⁷ The Guidehouse Report estimated that, had the Project been in operation during Winter Storm Uri and transmitted 2,500 MW of electricity east to west, the Project could have saved SPP participants over \$300 million in costs.¹²⁸ The Guidehouse Report also estimated the total savings generated by the Project with a capacity of 5,000 MW for Winter Storm Uri, the Northeast “Bomb Cycle” cold weather snap of 2017/2018, the Northeast “Polar Vortex” of 2014 and the Midwest “Polar Vortex” of 2019 at \$407 million.¹²⁹

83. There are no other similar projects on the market or in development that will offer Missouri utilities and other load interest direct access to a geographically diverse supply of high-capacity renewable energy via a permanently uncongested path, as cost effectively, during critical hours when the capacity is most needed.¹³⁰

84. The Project is needed for the reliability and resilience of the grid and national security.¹³¹

d. Two Phases

85. Staff objected to allowing the Project to be completed in phases because the Illinois Commerce Commission had recently approved the Illinois portion of the project.¹³² However, approval by the Illinois Commerce Commission is not the only thing required to ready the Illinois portion of the Project for construction.¹³³ Other items to

¹²⁷ Ex. 11, Petti Direct (adopted by Baker), p. 7.

¹²⁸ Ex. 11, Petti Direct (adopted by Baker), p. 7.

¹²⁹ Ex. 11, Petti Direct (adopted by Baker), pp. 7-8.

¹³⁰ Ex. 600, Groggin Rebuttal, pp. 24-25.

¹³¹ Ex. 1, Sane Direct, p.17; Ex. 14, Monken Direct, pp. 6-7 and Schedule JM-2; and Tr. Vol. 9, pp. 549-550.

¹³² Ex. 102, Eubanks Rebuttal, p. 4.

¹³³ Ex. 19, Chandler Direct, pp. 5-7.

consider include the divergent land acquisition and development timelines in Kansas and Missouri, as compared to Illinois.¹³⁴

86. Grain Belt requested to complete the Project in phases primarily due to the fact that land acquisition for Phase II significantly trails land acquisition for Phase I.¹³⁵

87. As of May 2023, Grain Belt Express has obtained over 87% of the easements for Phase I, which includes 366 easements in Missouri.¹³⁶ Land acquisition in Missouri is in an advanced stage largely due to the full-scale land acquisition efforts since the Commission issued the Original CCN in 2019.¹³⁷

88. Land acquisition for Phase II remains in very early stages. Grain Belt did not receive a certificate of public convenience and necessity in Illinois until March 2023. In the interim, judicial reviews and the Illinois statutory environment delayed Grain Belt from pursuing the land acquisition process, environmental permitting process, and engineering in Illinois.¹³⁸

89. It is expected to take two years or more for Grain Belt to obtain the necessary land acquisitions in Illinois.¹³⁹

90. By allowing the Project to be completed in two phases, more low-cost renewable energy will flow sooner across Grain Belt's transmission line and into the MISO region and AECI territory where it will be delivered to the MEC members who have already executed contracts, and other members are expected to participate.¹⁴⁰

¹³⁴ Tr. Vol. 10, pp. 811-812 and 827-828.

¹³⁵ Ex. 20, Chandler Rebuttal, p. 5.

¹³⁶ Ex. 20, Chandler Rebuttal, p. 5.

¹³⁷ Ex. 20, Chandler Rebuttal, pp. 5-6.

¹³⁸ Ex. 20, Chandler Surrebuttal, p. 6.

¹³⁹ Ex. 20, Chandler Surrebuttal, p. 6.

¹⁴⁰ Ex. 702, Grotzinger Rebuttal, p. 6.

91. Allowing the Project to be completed in phases will bring many of the benefits of the transmission line to Missouri sooner. Otherwise, those benefits will likely be delayed further by the administrative and judicial processes of other states.¹⁴¹

C. Applicant's Qualifications and Financial Ability

92. In the Commission's *Report and Order on Remand*¹⁴² the Commission found that Invenergy's management team had extensive experience in developing, constructing, and operating transmission and energy infrastructure projects.¹⁴³

93. Grain Belt has shown through the testimony of each of its witnesses that it continues to possess the degree of expertise required to carry out the engineering, procurement, construction, equipment design, routing and land acquisition tasks required to construct the Project and place it into operation.¹⁴⁴

94. Grain Belt's qualifications were not contested and Staff found that Grain Belt has the requisite qualifications.¹⁴⁵

95. The Commission previously concluded that Grain Belt and Invenergy had the financial ability to proceed with the Original Project.¹⁴⁶ The Commission also found that "Invenergy's financial condition is very strong."¹⁴⁷

¹⁴¹ Ex. 1, Sane Direct, p. 10.

¹⁴² Ex. 306, Report and Order on Remand, pp. 42-43.

¹⁴³ Ex. 306, Report and Order on Remand, pp. 42-43.

¹⁴⁴ Ex. 9, White Direct, pp. 7-12.

¹⁴⁵ Ex. 103, Hull Rebuttal, p. 2.

¹⁴⁶ Ex. 306, Report and Order on Remand, pp. 42-43.

¹⁴⁷ Ex. 306, Report and Order on Remand, p. 43 ("Invenergy's financial condition is very strong, as Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis. Invenergy has demonstrated that it has the ability to raise capital for large energy projects through access to its vast network of private debt and equity investors, having raised more than \$30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan.")

96. Grain Belt Express continues to have access to the necessary financial resources to carry out the development work for the Project, prior to engaging in project-specific financings for the construction of the Project. Invenergy Renewables has sufficient capital resources to provide the funding necessary to enable Invenergy Transmission and its subsidiaries to undertake the initial development and permitting work for the Project.¹⁴⁸

97. Grain Belt has a viable plan for raising the capital necessary to finance the cost of constructing the Project on a project financing basis.¹⁴⁹ Specifically, after advancing development and permitting activities to a status at which developers of wind and solar generation facilities and other potential customers of the transmission line are willing to enter into commercial agreements for an undivided interest (purchase or lease) or long-term contracts for transmission capacity on the Project, Grain Belt will enter such contracts with interested parties that satisfy necessary creditworthiness requirements.¹⁵⁰ Grain Belt will then raise debt capital using the aforementioned contracts as security for the debt.¹⁵¹

98. Grain Belt anticipates utilizing a combination of commercial and governmental sources of financing, and, at this time, is still evaluating all potential options for financing. Options for governmental sources of financing include the Western Area Power Administration (WAPA) Transmission Infrastructure Program (TIP); and the Bipartisan Infrastructure Bill Transmission Facilitation Program; Department of Energy loans to non-federal borrowers for transmission facilities pursuant to the Inflation

¹⁴⁸ Ex. 5, Shine Direct, pp. 5-6.

¹⁴⁹ Ex. 5, Shine Direct, pp. 5-14.

¹⁵⁰ Ex. 5, Shine Direct, pp. 7-8.

¹⁵¹ Ex. 5, Shine Direct, pp. 7-8.

Reduction Act and potentially other government funding options. Additional equity capital may also be raised to help finance construction of the Project, or Grain Belt's existing investors may make additional equity investments in the Project.¹⁵²

99. No party has challenged the financial ability of Grain Belt and Staff found that Grain Belt has the requisite financial ability.¹⁵³

D. Economic Feasibility of the Project

100. In its *Report and Order on Remand*, when determining the Original Project was economically feasible the Commission put some emphasis on the fact that the 3,500 MW portion of the Original Project to be sold in PJM demonstrated the financial viability of the project overall, since power prices for PJM were generally \$10/MWh higher than prices paid for the energy sold into the MISO market in Missouri.¹⁵⁴

101. In its *Report and Order on Remand* the Commission also found support for the Original Project being economically feasible because the project would link customers in Missouri, who desire to purchase low-cost wind power from western Kansas, with wind generation companies like Santa Fe, who propose to supply that energy, all under a business model, under which Grain Belt assumes the financial risk of building and operating the transmission line.¹⁵⁵

102. The Commission also found in its *Report and Order on Remand* that the economic feasibility of the Original Project was demonstrated by (a) a very strong corporate demand for renewable energy in PJM where users will pay a higher price; (b) the cost of generating wind energy in western Kansas continuing to drop; (c) wind speeds

¹⁵² Ex. 5, Shine Direct, p. 10.

¹⁵³ Ex. 108, Won Rebuttal, p. 6.

¹⁵⁴ Ex. 306, Report and Order on Remand, pp. 43-44.

¹⁵⁵ Ex. 306, Report and Order on Remand, p. 44.

in western Kansas that are substantially higher than Missouri, Illinois, Indiana, and Iowa; and (d) Kansas wind generators were able to produce energy at a lower cost because of two Kansas tax incentives and the low cost to construct wind farms.¹⁵⁶

103. In its *Report and Order on Remand*, the Commission also found support for the economic feasibility of the project because the cost of the project would not be recovered from Missouri ratepayers through either SPP or MISO regional cost allocation tariffs.¹⁵⁷

104. The economic model of the Project remains similar to the Original Project, though demand from customers and utilities has grown in recent years. There is a significant interest in wind development in Kansas as evidenced by the many gigawatts of projects in SPP's queue. This interest is expected to grow due to the tax incentives in the Inflation Reduction Act.¹⁵⁸

105. The total cost of the Project will be approximately \$4.95 billion, plus network upgrade costs, for a total of approximately \$5.7 billion.¹⁵⁹

106. Although the revised projected cost of the entire Project (\$4.95 billion) is higher than the 2016 projected cost (\$2.35 billion), the Project remains economically feasible because the cost of alternative resources has also significantly increased, while the demand for renewable energy continues to grow. Accordingly, even with the higher projected cost, the energy and capacity offered by the Project is more economically attractive than the alternatives.¹⁶⁰

¹⁵⁶ Ex. 306, Report and Order on Remand, p. 44.

¹⁵⁷ Ex. 306, Report and Order on Remand, p. 44.

¹⁵⁸ Ex. 1, Sane Direct, p. 29.

¹⁵⁹ Ex. 1, Sane Direct, p. 29; Ex. 5, Shine Direct, p. 7; and Tr. Vol. 9, p. 349.

¹⁶⁰ Ex. 1, Sane Direct, p. 29.

107. The projected cost to construct Phase I of the Project and place it in operation is approximately \$3.52 billion, not including the upgrade costs for RTO interconnections. The projected cost to construct Phase II of the Project and place it in operation is approximately \$1.43 billion, not including the upgrade costs for RTO interconnections. A portion of the Kansas converter station may be built with Phase II, in which case, a proportional amount between the phases would change.¹⁶¹

108. Each phase of the Project will be independently economically viable upon completion.¹⁶²

109. Grain Belt has the financial resources to carry out necessary development work prior to engaging in project-specific financings for the construction of each Phase of the Project.¹⁶³ Grain Belt's debt service from the construction loans will be covered by revenue from transmission capacity contracts.¹⁶⁴

110. Debt service coverage ratio is a metric used by lenders to ensure there is sufficient revenue to repay the debt service.¹⁶⁵ These ratios are typically 1.25 to 1.5.¹⁶⁶

111. Debt service coverage ratio is calculated using a numerator consisting of the cash available for debt service, which is the long-term contract revenue net of operating expenses over the denominator being principal and interest.¹⁶⁷

112. The Project is an interregional transmission line because it will extend from Kansas to Indiana and cross the seams of three regions, SPP, MISO, and PJM.¹⁶⁸

¹⁶¹ Ex. 5, Shine Direct, p. 7.

¹⁶² Ex. 6, Shine Surrebuttal, pp. 7-8.

¹⁶³ Ex. 5, Shine Direct, pp. 5-6.

¹⁶⁴ Ex. 5, Shine Direct, p. 10.

¹⁶⁵ Ex. 5, Shine Direct, pp. 10-11; and Tr. Vol. 9, p. 424.

¹⁶⁶ Ex. 5, Shine Direct, pp. 10-11.

¹⁶⁷ Tr. Vol. 9, pp. 424-425.

¹⁶⁸ Ex. 600, Groggin Rebuttal, pp. 3-4.

113. Since the Project will employ a participant-funded or “shipper pays” model, under which the costs of the Project are imposed on shippers who use the transmission line, none of those costs will be recovered through the cost allocation process of MISO, PJM, or SPP.¹⁶⁹ Accordingly, none of these costs will be passed through to Missouri ratepayers, and will not result in an increase in the transmission component of their retail rates. Missouri retail customers will only incur costs related to the Project to the extent that their local utility voluntarily chooses to purchase transmission capacity on the Project or purchases power transmitted on the Project by a third party.¹⁷⁰

114. Compared to wind energy from Kansas delivered to Missouri with the Project, wind energy generated in MISO and delivered to Missouri is substantially more expensive due primarily to transmission congestion costs.¹⁷¹

115. The price figures for solar presented by Witness Goggin on behalf of the Clean Grid Alliance also showed that the cost of solar energy from Kansas delivered to Missouri is also significantly lower than that of solar in MISO.¹⁷² And, those prices did not account for the Inflation Reduction Act’s creation of a solar production tax credit, which greatly reduces the cost and price of higher-quality solar resources like those in Kansas.¹⁷³

116. There is a growing demand for clean energy from large corporate customers. These customers represent an increasing amount of renewable energy procurement, accounting for 37% of all carbon-free energy added to the grid since 2014.

¹⁶⁹ Ex. 6, Shine Surrebuttal, p. 13.

¹⁷⁰ Ex. 5, Shine Direct, p. 9; Ex. 6, Shine Surrebuttal, p. 13; Ex. 109, Staff Report, p. 6; and Application to Amend CCN, para. 85.

¹⁷¹ Ex. 600, Goggin pp. 5-6.

¹⁷² Ex. 600, Goggin Rebuttal, pp. 7-8.

¹⁷³ Ex. 600, Goggin Rebuttal, p. 9.

Of the energy deals completed by corporate customers to date, 22% are within PJM markets and 13% are within MISO markets. The trend of high demand for carbon free energy continued in 2021 with corporate buyers procuring 11 GW of power. The demand in 2022 and beyond is projected to exceed the record amount from 2021.¹⁷⁴

117. When Phase I is completed, the Project will deliver 2,500 MW into Missouri, including 1,500 MW into MISO and an additional 1,000 MW into AECI.¹⁷⁵ That delivery, once contracted, supports Phase I construction and is sufficient for Phase I to remain economically viable throughout the Project life without any additional delivery into PJM.¹⁷⁶

118. Allowing the Project to be constructed in phases will also give Grain Belt a head-start in completing the entire length of the Project as one half of the line will already be constructed. While Phase I is not physically or economically reliant on Phase II, Phase II is physically reliant on Phase I.¹⁷⁷ Streamlining Phase II will, therefore, accelerate the realization of the benefits of the completed Project.

119. Grain Belt Express estimates that it will take approximately two years for land acquisition in Illinois to reach the current level of land acquisition in Missouri.¹⁷⁸ As discussed by Witness Shine, lenders require evidence of an advanced project developmental stage in order to obtain financing, and the progress of land acquisition, or lack thereof, plays a crucial role in advancing the Project to a point that financing would be achievable.¹⁷⁹

¹⁷⁴ Ex. 1, Sane Direct, p. 11.

¹⁷⁵ Ex. 2, Sane Surrebuttal, pp. 17-19.

¹⁷⁶ Ex. 2, Sane Surrebuttal, pp. 17-19; and Ex. 6, Shine Surrebuttal, Schedule RS-4.

¹⁷⁷ Ex. 2, Sane Surrebuttal, pp. 17-19; and Ex. 6, Shine Surrebuttal, Schedule RS-4.

¹⁷⁸ Ex. 20, Chandler Surrebuttal, p. 6.

¹⁷⁹ Ex. 20, Chandler Surrebuttal, pp. 7-8.

120. Lenders will only advance money once certain conditions have been met. Those conditions may include (a) having all necessary permits, (b) having procured any remaining financial commitments beyond lenders' funding to complete construction, and (c) having a high degree of certainty on budget and timeline. This due diligence by the lenders helps ensure that projects proceed prudently.¹⁸⁰

121. Construction lenders will not release funds to begin construction unless Grain Belt demonstrates that it has commitments for sufficient financing to construct the entire Phase of the Project. Lenders will not take the risk that additional necessary financing cannot be obtained, resulting in an incomplete project with limited collateral value.¹⁸¹ Therefore, if the Commission approves the Project to be completed in phases, and Phase I has the capability to be completed and operated independently of Phase II, the Commission should alter the financing condition¹⁸² for the Project so that Grain Belt cannot install transmission structures on associated with each phase on easement property in Missouri until it has obtained adequate funding to complete each respective phase of the Project.¹⁸³

122. Economic modeling continues to support the Commission's findings in the *Report and Order on Remand* that the Grain Belt transmission line links economic centers of demand in Missouri with low-cost suppliers in Kansas. Since 2019, that demand from customers and utilities has grown tremendously. The production tax credits and investment tax credits offered in the Inflation Reduction Act will increase the amount of generation seeking to interconnect to the Project and further saturate the current Kansas

¹⁸⁰ Ex. 5, Shine Direct, p. 12.

¹⁸¹ Ex. 5, Shine Direct, p. 12.

¹⁸² Ex. 306, Report and Order on Remand, Attachment 1 (Exhibit 206 in File no. EA-2016-0358), Section I.

¹⁸³ Ex. 5, Shine Direct, pp. 4-5 and 12; and Ex. 108, Won Rebuttal, pp. 7-8.

market. Adding transmission capacity to move this low-cost energy out of Kansas to other population centers will lower costs for consumers regionally, allowing the entire region to benefit from these low-cost sources of power.¹⁸⁴

E. Public Interest

123. The Grain Belt Project would lower wholesale energy pricing in Missouri.¹⁸⁵

124. As found above, the Project could reduce total energy and capacity expenditures for Missouri residents by over \$17.6 billion and create \$7.6 billion in social benefits from avoided emissions during the 2027-66 period.¹⁸⁶ Avoided emissions include the reduction of CO₂, SO₂, and NO_x in Missouri by 9.3%, 19.2%, and 17.2%, respectively.¹⁸⁷ Reducing CO₂ by 9.3% is the equivalent of removing over 13 million gasoline cars from Missouri roads for one year.¹⁸⁸ And the reduction in SO₂ and NO_x represents a reduction in air pollution, and therefore, a reduction in respiratory illness.¹⁸⁹

125. Adding transmission capacity to the power grid improves reliability by creating more numerous and robust energy pathways from sources to loads, allowing more economic flow, and increasing available capacity during times of transmission or generator outages.¹⁹⁰

126. The Department of Defense, Department of Energy, RTOs, and the National Association of Regulatory Commissioners (NARUC) have all recognized the need to

¹⁸⁴ Ex. 1, Sane Direct, pp. 33-34; and Ex. 600, Goggin Rebuttal, pp. 8-9.

¹⁸⁵ Ex. 3, Repsher Direct, p. 10.

¹⁸⁶ Ex. 3, Repsher Direct, Schedule MR-2, p. 14.

¹⁸⁷ Ex. 3, Repsher Direct, Schedule MR-2, p. 15.

¹⁸⁸ Ex. 3, Repsher Direct, Schedule MR-2, p. 15.

¹⁸⁹ Ex. 3, Repsher Direct, Schedule MR-2, p. 16.

¹⁹⁰ Ex. 3, Repsher Direct, Schedule MR-2, p. 16.

mitigate the risks of “nation state adversaries to deliberately target grid infrastructure . . . [.]”¹⁹¹

127. The Project will enhance the reliability and resilience of the grid by interconnecting four regions with the potential for black-start and bidirectional capabilities. The combination of these features makes the Project a unique system restoration resource, potentially capable of restarting the electric system from a shutdown condition.¹⁹²

128. HVDC transmission lines with VSC technology, like the Project, have demonstrated the capability to restart a major power grid, and are an additional option to power system operators in the event of power disruptions from major storm events.¹⁹³

129. The Project will add interregional transfer capacity that will help with hardening and redundancy of transmission infrastructure to support military installations in Missouri and elsewhere.¹⁹⁴

130. The Project advances the public interest through its impact on local economic, fiscal, and employment benefits.¹⁹⁵ For example, the Project will support 5,747 construction jobs statewide over a three-year period and a significant number of construction jobs in the Missouri counties it crosses: 247 for Audrain County, 318 for Buchanan County, 243 for Caldwell County, 66 for Callaway County, 303 for Carroll County, 362 for Chariton County, 226 for Clinton County, 804 for Monroe County, 356 for Ralls County, and 284 for Randolph County.¹⁹⁶ In addition to construction jobs, the Project

¹⁹¹ Tr. Vol 9, pp. 551-553.

¹⁹² Ex. 11, Petti Direct (adopted by Baker), Schedule AP-2, p. 34.

¹⁹³ Ex. 11, Petti Direct (adopted by Baker), Schedule AP-2, pp. 34-35; and Tr. Vol. 9, p. 554.

¹⁹⁴ Tr. Vol. 9, pp. 550-551.

¹⁹⁵ Ex. 21, Loomis Direct, pp. 7-8 and Schedule DL-2, pp. 10-14.

¹⁹⁶ Ex. 21, Loomis Direct, pp.7-8.

will support 104.4 long-term positions statewide and long-term jobs in the Missouri counties it crosses: 10.6 for Audrain County, 3.8 for Buchanan County, 1.9 for Caldwell County, 0.3 for Callaway County, 3.2 for Carroll County, 4.1 for Chariton County, 1.4 for Clinton County, 16.2 for Monroe County, 2.0 for Ralls County, and 2.6 for Randolph County.¹⁹⁷ These jobs are estimated to result in total worker earnings from the Project for Missouri of \$586,118,331 during the three-year construction period and \$8,113,077 during the operation phase of the Project.¹⁹⁸

131. The state will also benefit from economic output and increased income tax generation from wages paid during construction in Missouri and during the operation phase of the Project. During the construction phase of the Project, it will support over \$986 million in economic output for Missouri, and during the first 20 years of the Project's life, over \$15.8 million in long-term output supported annually for Missouri.¹⁹⁹

132. Grain Belt estimates that it will pay property taxes of approximately \$13.9 million in Missouri during the first full year and \$183.2 million during the first 20 years of operation.²⁰⁰

133. Grain Belt will source materials such as wire, steel, and aggregate within the state of Missouri, which will support the creation of jobs for those suppliers.²⁰¹

134. Grain Belt developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the transmission line project.²⁰² The Landowner Protocol is a comprehensive policy of how Grain Belt interacts, communicates, and

¹⁹⁷ Ex. 21, Loomis Direct, p. 8.

¹⁹⁸ Ex. 21, Loomis Direct, p. 8, Schedule DL-2, pp. 10–14.

¹⁹⁹ Ex. 21, Loomis Direct, p. 8, and Schedule DL-2, pp. 10–14.

²⁰⁰ Ex. 21, Loomis Direct, Schedule DL-2, p. 6.

²⁰¹ Ex. 21, Loomis Direct, Schedule DL-2, p. 7.

²⁰² Ex. 306, Report and Order on Remand, FOF 109.

negotiates with affected landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, tracking of obligations to landowners, the availability of arbitration to landowners, and a decommissioning fund.²⁰³

135. For those landowners whose property the HVDC main line of the Project will cross, Grain Belt will offer three types of compensation: an easement payment, structure payments, and crop or damages payments.²⁰⁴ For those landowners whose property the AC Tiger Connector of the Project will cross, Grain Belt proposes to offer two types of compensation: an easement payment and crop or damages payments.²⁰⁵

136. If Grain Belt obtains an easement from a landowner, the property will still belong to the landowner and can be utilized for activities such as farming, recreation, and other activities that do not interfere with the operation of the transmission line. After construction of the facilities, the landowner will retain the ability to continue agricultural production on the entirety of the easement area except for the relatively small footprint of the structures, which typically occupy less than 1% of the total easement area.²⁰⁶

137. If the Project should be retired from service, Grain Belt has committed to establish a decommissioning fund to pay for the following wind-up activities:
1) dismantling, demolishing and removing all equipment, facilities and structures;

²⁰³ Ex. 19, Chandler Direct, Schedule KC-5 (Landowner Protocol); and Ex. 20, Chandler Surrebuttal, p. 18 and Schedules KC-6 (Code of Conduct) and KC-7 (Missouri Agricultural Impact Mitigation Protocols).

²⁰⁴ Ex. 19, Chandler Direct, p. 15; and Ex. 24, Exhibit C and Exhibit D to HVDC Easement.

²⁰⁵ Ex. 19, Chandler Direct, p. 15; and Ex. 24, Exhibit C and Exhibit D to AC Easement.

²⁰⁶ Ex. 19, Chandler Direct, p. 15; and Ex. 20, Chandler Surrebuttal, p. 16.

2) terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located; 3) securing, maintaining and disposing of debris with respect to the Project facilities; and 4) performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property within the easements to its original condition.²⁰⁷

138. The Project is designed to have a minimal impact to land.²⁰⁸ In Phase I for the HVDC Main Line approximately 9 acres will be taken out of agricultural production. For Phase I Tiger Connector approximately 0.2 acres will be taken out of agricultural production. And for the Phase II HVDC Main Line, approximately 7 acres will be taken out of agricultural production.²⁰⁹

139. To minimize the effects on agricultural land, wherever practicable, for both the HVDC Main Line and the Tiger Connector, Grain Belt attempted to site structures outside of agricultural land, even if the parcel is primarily agricultural.²¹⁰

140. The Routing Team for the Project also tried to avoid built-up areas, residences, wetlands, forested areas, center pivot irrigation, and where practical, to follow existing developed corridors such as roads and existing transmission and distribution lines.²¹¹

²⁰⁷ Ex. 306, Report and Order on Remand, FOF 113. See also, *Initial Brief of Grain Belt Express*, (filed July 7, 2023), pp. 54-56.

²⁰⁸ Ex. 10, White Surrebuttal, pp. 10-11.

²⁰⁹ Ex. 10, White Surrebuttal, p. 11. (The rough estimates are based upon the structure spotting and tower base geometries as of November 23, 2022. Tower base geometries that were counted towards agricultural land impacted were for all towers on parcels that are primarily used for crop production according to the 2019 National Land Cover Database.)

²¹⁰ Ex. 10, White Surrebuttal, p. 11.

²¹¹ Ex. 17, Burke Direct, p. 6.

141. While there are no federal or Missouri requirements regarding agricultural impact mitigation practices for constructing overhead transmission lines, Grain Belt has created the Missouri Agricultural Impact Mitigation Protocol, which establishes standards and policies to avoid, minimize, or mitigate any negative agricultural impacts that may result due to transmission line and converter facilities construction and operation.²¹²

142. One provision of the Easement Agreement states that, except in an emergency, Grain Belt will provide at least 24-hours' notice to landowners in advance of accessing their property for the first time for the purpose of constructing, modifying, or repairing the facilities.²¹³ A condition ordered in the Original CCN, and agreed to by Grain Belt in this case, states that Grain Belt will make "reasonable efforts to contact landowners" before entering the right of way.²¹⁴

143. Grain Belt's management team will assign a land liaison to the Project to communicate with landowners prior to entry on their properties, during construction operations and after construction activities are completed, to address any concerns and maintain consistent communications. These positions will be filled by employees who have experience in both the construction industry and working knowledge of agriculture practices. This dual knowledge base will aid in conducting successful construction operations across agriculture lands.²¹⁵

144. Although there are benefits to Missouri associated with Phase II of the Project, the majority of the benefits accrue to Missouri in Phase I. If the Project is not

²¹² Ex. 20, Chandler Surrebuttal, Schedule KC-7, p. 2.

²¹³ Ex. 19, Chandler Direct, Schedule KC-4, para. 2.f.

²¹⁴ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358), Condition VI.1.

²¹⁵ Ex. 1, Sane Direct, pp. 27-28.

constructed in phases, the benefits that would accrue to Missouri as a result of the Project will not occur until land acquisition has reached an advanced state in Illinois such that financing for both Phase I and Phase II could be obtained. As a result, the benefits to Missouri, including reliability and resiliency benefits, economic benefits, and environmental benefits will be delayed.²¹⁶

F. Conditions

145. In Grain Belt's Original CCN granted in the *Report and Order on Remand* in File No. EA-2016-0358,²¹⁷ the Commission found that the benefits of the project to Missouri outweighed the interests of the individual landowners, many of whose concerns the Commission addressed through conditions placed on the CCN. The Commission found that numerous conditions to which Grain Belt voluntarily agreed were reasonable and necessary, and ordered them. The conditions included provisions related to financing, interconnection, nearby utility facilities, emergency restoration, construction and clearing land, maintenance and repair of the line and right-of-way, and landowner interactions and right-of-way acquisition.²¹⁸

146. In addition, the Original CCN required Grain Belt to comply with the Missouri Landowner Protocol, including but not limited to a filed Code of Conduct and the Missouri Agricultural Mitigation Impact Protocol (collectively referred to as the "Protocols"), and to incorporate those terms and obligations into any easement agreement with Missouri landowners. The Protocols are a comprehensive policy governing how Grain Belt

²¹⁶ Ex. 20, Chandler Surrebuttal, pp. 7-8.

²¹⁷ Ex. 306, Report and Order on Remand.

²¹⁸ Ex. 306, Report and Order on Remand, Attachment 1 (Exhibit 206 in File No. EA-2016-0358).

interacts, communicates and negotiates with affected landowners, and to avoid, minimize or mitigate agricultural impacts.²¹⁹

147. The Easement Agreement filed in this case provides that “in the event of a conflict between this Agreement and the conditions of the Protocols, the provisions more favorable to the Landowner shall control to the extent of such conflict.”²²⁰

148. One issue brought to the Commission by the parties is whether to modify the Missouri Landowner Protocol regarding compensation. In the *Report and Order on Remand*, the Commission granted Grain Belt a CCN but directed that it must comply with the Missouri Landowner Protocol, including, but not limited to, a Code of Conduct and the Missouri Agricultural Mitigation Impact Protocol, and to incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.²²¹

149. The Missouri Landowner Protocol required the compensation to be offered to landowners for the Original Project to include:

- a. an easement payment of 110% of fair market value of the easement;
- b. a structure payment consisting of a one-time payment of \$6,000 or \$500 annually for a monopole or lattice mast structure, and a one-time payment of \$18,000 or \$1500 annually for a lattice structure with annual increases of 2% for as long as a structure is located on the easement area; and
- c. an agricultural impact payment on a case-by-case basis.²²²

²¹⁹ Ex. 19, Chandler Direct, Schedule KC-4 (Easement Agreement); and Exhibit 20, Chandler Surrebuttal, Schedules KC-6 (Code of Conduct) and KC-7 (Missouri Agricultural Impact Mitigation Protocol).

²²⁰ Ex. 19, Chandler Direct, Schedule KC-4, paragraph 22.

²²¹ Ex. 306, Report and Order on Remand, Ordered Paragraph 8.

²²² Ex. 19, Chandler Direct, Schedule KC-5 (Missouri Landowner Protocol – For Right-of-Way Acquisition for the Grain Belt Express).

150. Grain Belt has agreed to, or requested, certain conditions being ordered by the Commission for this Project. This includes:

a. All conditions established by the *Report and Order on Remand* remaining in place with the exceptions and modifications below.²²³

b. Modification of the “Financing Condition” set forth in Section I.1. of Attachment 1 to the *Report and Order on Remand*²²⁴ so that it allows Grain Belt to build the Project in two phases without procuring financing for both phases (the whole Project) before beginning installation of transmission facilities on easement property in Missouri for any one phase.²²⁵

c. That Grain Belt shall not install transmission facilities associated with Phase I on easement property in Missouri until it has submitted documentation to Commission Staff regarding compliance with all applicable federal and Missouri environmental permits associated with Phase I. Further, Grain Belt shall not install transmission facilities associated with Phase II on easement property in Missouri until it has submitted documentation to Commission Staff regarding compliance with all applicable federal and Missouri environmental permits associated with Phase II.²²⁶

d. The Missouri Landowner Protocol Missouri Landowner Protocol – For Right-of-Way Acquisition, as referenced and incorporated into the *Report and Order on Remand* at Ordered Paragraph 8, be modified to allow compensation to

²²³ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358).

²²⁴ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358).

²²⁵ This modified condition was proposed by Staff Witness Won (Ex. 108, Won Rebuttal, pp. 7-8.) and modified further by the testimony of Grain Belt Witness Shine (Ex. Ex. 6, Shine Surrebuttal, pp. 4-5).

²²⁶ Tr. Vol. 9, pp. 556-557; Ex. 101, Cunigan Rebuttal, pp.4-9 (Condition requested by Staff Witness Cunigan); Ex. 16, Stelzleni, pp. 3-4 (Grain Belt’s agreement to the condition).

the Tiger Connector Landowners for the easement of 150% of fair market value and agricultural impact payment to be valued on a case-by-case basis as set out in Exhibit 19, Direct Testimony of Kevin Chandler, Schedule KC-5.

e. If Grain Belt is designated as a system restoration resource by a regional transmission organization, it shall provide notice of such designation to Staff, subject to external confidentiality protections limiting disclosure of certain documents or information.²²⁷

151. Other conditions agreed to by Grain Belt and ordered by the Commission in the *Report and Order on Remand* included:

a. Grain Belt and Invenergy agreed that Invenergy Transmission, LLC and Invenergy Investment Company, LLC shall cooperate with Staff in providing reasonable access to Invenergy's un-redacted consolidated financial records (including *in camera* review of notes to financial statements) until completion or official abandonment of the Original Project.

b. Grain Belt and Staff agreed that if Grain Belt acquires any involuntary easements in Missouri by means of eminent domain and does not obtain the necessary financial commitments within five years of the date such easement rights are recorded, Grain Belt agrees to return possession of the easement to the landowner within 60 days and record the dissolution of the easement without requiring any reimbursement of payments by the landowner.

c. Grain Belt and Invenergy agreed that if there are any material changes in the design and engineering of the Project from what is contained in the

²²⁷ This modification was suggested in Ex. 102, Eubanks Rebuttal, p. 17. Grain Belt indicated it did not object at Ex. 7, Rodriguez Surrebuttal.

application, Grain Belt will file an updated application subject to further review and determination by the Commission.

d. Grain Belt and Invenergy agreed that if outstanding regional transmission organization studies raise any new issues, then the Commission must be satisfied with how Grain Belt resolves the issues.

e. Grain Belt agreed to file with the Commission a copy of its annual report that is filed with FERC.²²⁸

152. Staff proposed that if the Commission grants a CCN for the Project, that it define “material change” to include: (1) a change in the converter station location or point(s) of interconnection; (2) a modification of 100 MW in converter station design size; (3) a change of a half billion dollars in estimated cost; or (4) a change of 100 MW of obtaining the injection rights of the full 1,500 MW into MISO and 1,000 MW into AECI, or a change in 100 MW of obtaining the rights to withdraw from MISO a currently proposed 0 MW.²²⁹

153. If the Commission grants a CCN for the Project, MLA proposed that the Commission direct Grain Belt to offer the landowners on the Tiger Connector the option of either accepting Grain Belt’s compensation proposal of a one-time 150% proposal, or the 110% plus per structure compensation plan of the HVDC line landowners.

154. The Missouri Farm Bureau, Missouri Cattlemen’s Association, Missouri Soybean Association, Missouri Corn Growers Association, and Missouri Pork Association

²²⁸ Ex. 306, Report and Order on Remand, Ordered Paragraphs.

²²⁹ Ex. 107, Stahlman Rebuttal, pp. 8-9.

sent a letter to Grain Belt requesting that landowners on the Tiger Connector be offered at least 150% of fair market value.²³⁰

155. Mr. Chandler testified that from a processing and record keeping perspective, it would be difficult for Grain Belt to accommodate different payment schedules for different landowners on the Tiger Connector.²³¹

156. It is unlikely that many landowners would benefit from opting for the 110% plus per structure compensation plan of the HVDC line landowners.²³² However, a landowner with a small parcel of land with a structure on it, could receive more compensation with the same plan as the HVDC landowners than the 150% without structure compensation.²³³

III. Conclusions of Law

A. Statutory Authority

A. The Commission may lawfully issue a CCN to Grain Belt. Grain Belt has applied for a line certificate under Section 393.170.1, RSMo.²³⁴

B. Section 386.020(15), RSMo, defines an “electrical corporation” as “every corporation, [or] company...owning, operating, controlling or managing any electric plant...[.]” Electric plant is defined in Section 386.020(14), RSMo, as “all real estate... and personal property...used or to be used for or in connection with or to facilitate

²³⁰ Ex. 19, Chandler Direct, p. 16 (citing a July 21, 2022 letter from the Agricultural Associations).

²³¹ Tr. Vol. 10, p. 695.

²³² Tr. Vol. 10, p. 650.

²³³ Tr. Vol. 10, pp. 818-819.

²³⁴ Section 393.170.1, RSMo, states that “No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission . . .”

the...transmission...of electricity for...power...[.]” Grain Belt is an “electrical corporation” within the meaning of Section 386.020(15), RSMo, and subject to the jurisdiction of the Commission.

C. While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.²³⁵ As the Commission previously found in its *Report and Order on Remand*, Grain Belt’s Project will serve the public use, and Grain Belt qualifies as a public utility.²³⁶

D. Since Grain Belt brought the application, it bears the burden of proof.²³⁷ The burden of proof is the preponderance of the evidence standard.²³⁸ In order to meet this standard, Grain Belt must convince the Commission it is “more likely than not” that its allegations are true.²³⁹

E. When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- i. There must be a need for the service;

²³⁵ *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 9 S.W.2d at 592. While the Buchanan County transmission company was determined not to be a public utility because it transmitted electricity to a private company for private use, the court clearly implied that if the electricity had been transmitted to a public utility for public use the transmission company would also be considered to be a public utility.

²³⁶ *Missouri Landowners All. v. Pub. Serv. Comm’n*, 593 S.W.3d 632 (Mo. Ct. App. 2019).

²³⁷ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

²³⁸ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

²³⁹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

- ii. The applicant must be qualified to provide the proposed service;
- iii. The applicant must have the financial ability to provide the service;
- iv. The applicant's proposal must be economically feasible; and
- v. The service must promote the public interest.²⁴⁰

F. When determining whether the project is necessary or convenient for the public service, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost."²⁴¹

G. Section 393.170.3, RSMo, states that "[t]he commission may by its order impose such condition or conditions as it may deem reasonable and necessary."

H. Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body. The public interest is a matter of policy to be determined by the Commission.²⁴² It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.²⁴³ Determining what is in the interest of the public is a balancing

²⁴⁰ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

²⁴¹ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

²⁴² *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

²⁴³ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597 -598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

process.²⁴⁴ In making such a determination, the total interests of the public served must be assessed.²⁴⁵ In Missouri, state energy policy can be found in laws such as the Renewable Energy Standard,²⁴⁶ established by vote of the Missouri public in 2008, and the Energy Efficiency Investment Act (MEEIA),²⁴⁷ promulgated by the Missouri legislature in 2013, as well as the Comprehensive State Energy Plan, an initiative implemented by the Missouri Division of Energy in 2015. Consistent with these state policies, this Commission has in the past expressed strong support for the “development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere.”²⁴⁸

I. Subsection 523.025, RSMo, effective August 28, 2022, states, in part:

If an electrical corporation as defined in section 386.020 . . . acquires any involuntary easement in this state by means of eminent domain and does not obtain the financial commitments necessary to construct a project for which the involuntary easement was needed in this state within seven years of the date that such easement rights are recorded with the appropriate county recorder of deeds, the corporation shall return possession of the easement to the fee simple title holder within sixty days and cause the dissolution of the easement to be recorded with the county recorder of deeds. In the event of such return of the easement to the title holder, no reimbursement of any payment made by the corporation to the title holder shall be due.

²⁴⁴ *In the Matter of Sho-Me Power Electric Cooperative’s Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

²⁴⁵ *Id.*

²⁴⁶ Section 393.1030, RSMo.

²⁴⁷ Section 393.1075, RSMo.

²⁴⁸ Ex. 306, Report and Order on Remand, p. 45 (citing, *In the Matter of the Application of KPC&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, Report and Order issued March 2, 2016, p. 15. See also, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092, Report and Order issued July 11, 2018, p. 20; *In the Matter of Union Electric Company d/b/a Ameren Missouri’s Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, Report and Order issued April 24, 2013, p. 14.)

J. Section 523.039, RSMo, states:

For eminent domain proceedings of any agricultural or horticultural property by an electrical corporation as defined in section 386.020 . . . for the purposes of constructing an electric plant subject to a certificate of convenience and necessity under subsection 1 of section 393.170 just compensation shall be an amount equivalent to fair market value multiplied by one hundred fifty percent, as determined by the court. The provisions of this subsection shall not apply to applications filed pursuant to section 393.170 prior to August 28, 2022.

K. Section 523.277, RSMo. Creates the Office of Ombudsman for Property Rights, appointed by the Public Counsel, to “assist citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures.”

L. Condemnation proceedings are governed by Chapter 523, RSMo, and are the purview of the state courts. The process includes protections for landowners including, a court review of whether the company negotiated in good faith;²⁴⁹ the requirement for applications filed after August 28, 2022, for payment for agricultural or horticultural land at 150% of fair value,²⁵⁰ and Section 523.265, RSMo, which allows a landowner to propose alternate locations under this procedure:

within thirty days of receiving a written notice sent under section 523.250, the landowner may propose to the condemning authority in writing an alternative location for the property to be condemned, which alternative location shall be on the same parcel of the landowner's property as the property the condemning authority seeks to condemn. The proposal shall describe the alternative location in such detail that the alternative location is clearly defined for the condemning authority. The condemning authority shall consider all such alternative locations. This section shall not apply to takings of an entire parcel of land. A written statement by the condemning authority to the landowner that it has considered all such alternative locations, and briefly stating why they were rejected or accepted, is conclusive evidence that sufficient consideration was given to the alternative locations.

²⁴⁹ Section 523.256, RSMo.

²⁵⁰ Section 523.256, RSMo.

IV. Decision

Grain Belt has come to the Commission for approval of a CCN for the Project. As stated above, in determining whether the Project is necessary or convenient, the Commission traditionally applies five criteria. The Commission finds those criteria are a suitable way to guide it in making a determination on this application.

A. Need for the Project

The main objective of the Project is to transport clean, low-cost electricity from renewable generation plants to be built in southwestern Kansas, which has high-capacity factor wind and solar resources, to the electricity markets in Missouri and Illinois and other states located within, or adjacent, to the MISO and PJM grids. The Project will be capable of delivering up to 2,500 MW of power into the MISO and AECI grids at a delivery point in Missouri, and up to 2,500 MW of power into the PJM grid, at a delivery point in western Indiana. This extra transmission capacity will both help meet regional energy needs and diversify sources of energy across the region.

In the *Report and Order on Remand*, the Commission found that there was a need for the Original Project. In this application, Grain Belt has shown that the need still exists and that there is also a need for the Project.

The Project is needed because of the benefits to MEC and its customers, who have committed to purchase 136 MW of wind power utilizing the transmission service purchased from Grain Belt. Additionally, the testimony showed that the remaining 64 MW that is the subject of the TSA between Grain Belt and MEC is very likely to be fully subscribed, as soon as there is some certainty to the Project.

There was also substantial evidence of increasing demand for renewable energy from Missouri cities, industrial, large corporate, and utility customers that are setting renewable energy standards and carbon reduction goals. The MISO study, the PA Consulting Study, and the testimony also showed the trend is toward industrial retail and wholesale, commercial, and large corporate customers demanding a greater amount of renewable energy. Both Ameren Missouri and Evergy have also announced carbon reduction goals further demonstrating a need for renewable energy.

Further, in a state whose regulated utilities participate in two separate regional transmission organizations, it is appropriate to consider the Project's effect on other market participants and the various regional transmission organizations. There was significant evidence of demand from outside of Missouri and evidence that the influx of low-cost, high capacity factor energy will reduce prices in the MISO and SPP markets. The Project was shown to be the best option for low cost renewable energy delivered into MISO. Savings across the MISO footprint in the year 2028 was estimated to be over \$1.1 billion.

The PA Consulting Report found that expanding the Original Project into the Project will lower energy and capacity costs in Missouri by approximately 6.1 percent over the period of 2027-2066, resulting in over \$17.6 billion of savings for Missouri residents. In addition to the financial savings, the PA Consulting Report also found the Project is projected to reduce emissions of CO₂, SO₂, and NO_x in Missouri by 9.3%, 19.2%, and 17.2%, respectively, enhancing local utilities' abilities to meet their climate and reliability goals, while also delivering immediate local air quality and health benefits. PA Consulting

quantified these emission reduction benefits as over \$7.6 billion in social benefits for the 2027-2066 time period, for total cumulative benefits of more than \$25.3 billion by 2066.

Need is also evident in that the Project is needed for reliability and resiliency of the grid and for national security. And by increasing the size of the transmission capacity and adding the Tiger Connector, including moving the converter station and AC line, the Project will bring the interconnectivity to multiple regions to improve the reliability and resiliency of the grid for Missourians and in the interest of national security. This will help guard against price spikes and outages such as those experienced by Winter Storm Uri and Elliot.

Finally, because Phase II is substantially behind Phase I in the easement acquisitions, it is clear that requiring the whole Project to be built before allowing the Phase 1 (Kansas through the Tiger Connector) portion to become operational, will only serve to delay the benefits to Missouri and the region. Thus, there is a need to allow the Project to be completed in phases and therefore, make the amendments to the financing requirements previously placed on Grain Belt.

In sum, the Project is needed as demonstrated by the agreements with the MEC, expressed demand from municipalities, executed Memorandums of Understanding (MOUs), demand from commercial and industrial customers, the carbon emission reduction goals and/or net-zero equivalent targets of local utilities, and demand outside of Missouri. The Project is also needed because it will result in \$17.6 billion in savings to Missouri ratepayers and \$7.6 billion in social benefits. Additionally, the Project is needed for the reliability and resilience of the grid and national security. Finally, phasing of the Project is needed to hasten the benefits brought to Missourians and the region.

B. Applicant's Qualifications and Financial Ability

In the Commission's *Report and Order on Remand* the Commission found that Invenergy's management team had extensive experience in developing, constructing, and operating transmission and energy infrastructure projects. Grain Belt has shown that it continues to possess the degree of expertise required to carry out the engineering, procurement, construction, equipment design, routing and land acquisition tasks required to construct the Project and place it into operation. Grain Belt's qualifications were not contested and Staff found that Grain Belt has the requisite qualifications.

The evidence also showed that Grain Belt has a viable plan for raising the capital necessary to finance the cost of constructing the Project on a project financing basis. Specifically, after advancing development and permitting activities to a status at which developers of wind and solar generation facilities and other potential customers of the transmission line are willing to enter into commercial agreements for an undivided interest (purchase or lease) or long-term contracts for transmission capacity on the Project, Grain Belt will enter such contracts with interested parties that satisfy necessary creditworthiness requirements. Grain Belt will then raise debt capital using the aforementioned contracts as security for the debt and may also raise additional equity capital.

No party has challenged the financial ability of Grain Belt and Staff found that Grain Belt has the requisite financial ability. Likewise, the Commission concludes that Grain Belt has the qualifications and financial ability to develop, construct, and operate the Project.

C. Economic Feasibility of the Project

Grain Belt's Project is economically feasible because it links customers in Missouri who desire to purchase low-cost wind power from western Kansas with wind generation companies like Santa Fe who propose to supply that energy, all under a business model under which Grain Belt assumes the financial risk of building and operating the transmission line. Moreover, the cost of the project will not be recovered from Missouri ratepayers through either SPP or MISO regional cost allocation tariffs.

When analyzing the economic feasibility of the Original Project, the Commission relied, in part, on the fact that the 3500 MW portion of the project to be sold in PJM that demonstrates the financial viability of the project overall, since power prices for PJM are generally \$10/MWh higher than prices paid for the energy sold into the MISO market in Missouri. Although the Project will deliver less energy to the PJM market, it will now deliver more energy to Missouri, AECI, and MISO.

Although the revised projected cost of the entire Project (\$4.95 billion) is higher than the 2016 projected cost (\$2.35 billion), the Project remains economically feasible, because the cost of alternative resources has also significantly increased, while the demand for renewable energy continues to grow. Accordingly, even with the higher projected cost, the energy and capacity offered by the Project is more economically attractive than the alternatives.

Economic modeling continues to support the Commission's findings in the *Report and Order on Remand* that the Project links economic centers of demand in Missouri with low-cost suppliers in Kansas. Since the Original CCN was granted, that demand from customers and utilities has continued to grow. The production tax credits and investment

tax credits offered in the Inflation Reduction Act will only increase the amount of generation seeking to interconnect to the Project and further saturate the current Kansas market. Adding transmission capacity to move this low-cost energy out of Kansas to other population centers will lower costs for consumers regionally, allowing the entire region to benefit from these low-cost sources of power.

The Project is projected to produce \$17.6 billion in direct ratepayer benefits for the 2027-2066 period. These \$17.6 billion in ratepayer benefits more than offset the associated costs (\$5.7 billion) of the Project without even considering the significant reliability and resilience benefits that the Project brings.

The economic feasibility of Phase II of the Project has not been demonstrated to have changed since the Original CCN was granted. There is still a very strong corporate demand for renewable energy in all regions to which the Project will connect. With that demand and the Inflation Reduction Act incentives, the economics of bringing renewable energy from western Kansas into Missouri and beyond continues to make the project economically feasible.

An additional safe guard on the economic feasibility of the Project is the lenders for the project. Lenders will only advance money once certain conditions have been met. Those conditions may include (a) having all necessary permits, (b) having procured any remaining financial commitments beyond lenders' funding to complete construction, and (c) having a high degree of certainty on budget and timeline. This due diligence by the lenders will help ensure that the Project will be economically feasible from the lenders point of view before proceeding. Further, as indicated below, because Grain Belt and its

customers and investors will ultimately bear the risk of the Project not being financially feasible, the public interest benefits outweigh the economic feasibility risks.

D. Public Interest

Determining what is in the interest of the public is a balancing process in which the Commission must consider the total interests of the public served. Additionally, consistent with state policies established by statute (created by the Missouri Legislature and by initiative petition by Missouri voters), such as the Renewable Energy Standard²⁵¹ and the MEEIA,²⁵² this Commission has in the past expressed support for the “development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere.”²⁵³

The Project will lower energy production costs in Missouri under future energy scenarios developed by MISO and will have a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on renewable energy diversity in the region. Geographic diversity in wind and solar resources inevitably helps to reduce system variability and uncertainty in regional energy systems. In addition, the Project will provide positive environmental impacts, since displacement of fossil fuels for wind and solar power will reduce emissions of carbon dioxide, sulfur dioxide, and nitrogen

²⁵¹ Section 393.1030, RSMo.

²⁵² Section 393.1075, RSMo.

²⁵³ See Exhibit 306, Report and Order on Remand, p. 45, (citing to *In the Matter of the Application of KPC&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, Report and Order issued March 2, 2016, p. 15. See also, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092, Report and Order issued July 11, 2018, p. 20; *In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, Report and Order issued April 24, 2013, p. 14.)

oxide, and reduce water usage in Missouri. Additionally, the annual cost savings to MEC member cities that participate in the Project will likely be passed through to their residential and industrial customers in the form of rate relief or invested in their electrical distribution systems benefitting Missourians.

The Project will support the equivalent of 5,757 total construction jobs over three years. These jobs are estimated to result in total worker earnings for Missouri of \$586,118,331 during the three-year construction period and \$8,113,077 during the operation phase of the Project. The Project will also result in significant property tax benefits in the state of Missouri. Further, the Project will create temporary construction jobs and permanent jobs within the state of Missouri. For example, the Project will support the equivalent of 5,747 construction jobs statewide over a three-year period. In addition to these construction jobs, the Project will support approximately 104 long-term positions statewide. These jobs are estimated to result in total worker earnings from the Project for Missouri of \$586,118,331 during the three-year construction period and \$8,113,077 during the operation phase of the Project.

The negative impacts of the Project on the land and landowners, while not completely removed, will be mitigated by the conditions placed on the grant of the CCN including (a) a landowner protocol to protect landowners; (b) compensation payments; (c) a binding arbitration option for easement negotiations; (d) a decommissioning fund; and (e) an agricultural impact mitigation protocol to avoid or minimize negative agricultural impacts. Agricultural impacts will also be reduced because no more than nine acres of land in Missouri will be taken out of agricultural production as a result of Project structures.

An additional factor mitigating landowner impact is that in the Protocols Grain Belt has committed to considering landowner requests for alternate routes, including potential co-locations in existing developed corridors such as roads and transmission and distribution lines. The Protocols also require that Grain Belt strive to implement certain elements into its easement negotiations, including “[p]roviding a review and approval process for landowner-requested micro-siting changes on their property.”²⁵⁴ The Commission expects that Grain Belt will seriously consider and provide responses in writing to these landowner requests and, as required in the Protocols, will track and follow through with the obligations it and its agents have made with landowners.²⁵⁵ Additionally, the Commission expects Grain Belt going forward to provide the same response method in as an efficient manner as possible to all the landowners, not just the landowners in which it is involved in condemnation proceedings.

Also mitigating any harm to landowners, are the numerous provisions in the Protocols and the Easement Agreement related to repair or compensation for damage to crops, livestock, and land improvements.²⁵⁶ However, because there are a number of provisions in several documents, the landowners will need to be knowledgeable of all the remedies available to them. The Commission would highlight in particular Paragraph 22, of the Easement Agreement which states “[i]n the event of a conflict between this Agreement and the conditions of the Protocols, the provision more favorable to Landowner shall control to the extent of such conflict.” This and other provisions giving

²⁵⁴ Ex. 19, Chandler Direct, Schedule KC-5, p. 2.

²⁵⁵ Ex. 19, Chandler Direct, Schedule KC-5, Section 6 Tracking of Landowner Obligations.

²⁵⁶ Ex. 19, Chandler Direct, Schedules KC-5 (Missouri Landowner Protocol – For Right-of-Way Acquisition for the Grain Belt Express) and KC-4 (Easement Agreement); Exhibit 20, Chandler Surrebuttal, Schedules KC-6 (Code of Conduct) and KC-7 (Missouri Agricultural Impact Mitigation Protocol); Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358); and other conditions set out in this *Report and Order*.

deference to the landowner, as well as the requirement in the agreed to conditions that all Grain Belt contractors carry and maintain a minimum of \$1 million of liability insurance to respond to landowners' damage claims,²⁵⁷ help mitigate any harm from the easement itself.

Finally, the Commission notes that Chapter 523, RSMo, has additional protections for landowners facing condemnation proceedings at the circuit court. These include a review of negotiations in good faith, compensation at 150% for agricultural or horticultural land, and a process for landowners to propose alternate locations.

It is the Commission's responsibility to balance the interests of all stakeholders, including the affected landowners, to determine what is in the best interest of the general public as a whole. The evidence in the case demonstrated that the Project will create both short-term and long-term benefits to ratepayers and all the citizens of the state. In the Commission's view, the broad economic and environmental benefits; the demand from municipalities, industrial, and retail business for renewable energy; the increased resiliency and reliability of the grid; the benefits to national security; and other benefits of the Project to the entire state of Missouri and beyond outweigh the interests of the individual landowners. Many of the landowners' concerns will be addressed through carefully considered conditions placed on the CCN.

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement toward renewable energy. The energy on the Project provides great promise as a source for affordable, reliable, safe, and

²⁵⁷ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358), Condition VI.2.

environmentally-friendly energy that will increase resiliency of the grid. The Project will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, with the conditions set out below, in the public interest.

The Commission also finds it in the public interest to allow the project to proceed in phases, so that the benefits to Missourians may be realized faster. As such, the Commission will change the conditions previously placed on the Original Project to facilitate the Project proceeding in two phases.

E. Conditions

The parties have proposed certain conditions to be ordered if the Commission granted Grain Belt a CCN for the Project. The Commission finds that some additional conditions are reasonable and necessary, as explained below. The Commission concludes that the remaining proposed conditions are unreasonable, unnecessary, or moot, so those will not be adopted.

Grain Belt has agreed to certain conditions being placed on the grant of a CCN for the Project. Grain Belt has agreed to all the conditions from the Original CCN as set out in the *Report and Order on Remand*, except with changes to the Financing Condition and the changes to the easement compensation provision for landowners along the Tiger Connector (AC line). The Commission has found that the completion of the Project in two phases is needed to provide benefits of the Project to Missourians faster and is in the public interest. Likewise, the Commission finds that it is reasonable and necessary for the Financing Condition for the Project to be changed from that previously granted, so that Grain Belt may build the Project in two phases.

Grain Belt also asks to modify the Landowner Protocols to authorize compensation to the Tiger Connector Landowners at 150% of fair market value. Section 523.039 became effective on August 28, 2022, just four days after Grain Belt filed this application. Subsection 523.039.2 requires electrical corporations filing applications for a certificate of convenience and necessity on August 28, 2022 or later to pay in eminent domain proceedings the fair market value of any agricultural or horticultural property 150% of the fair market value of the property. Grain Belt claims that, in keeping with the spirit of the compensation plan in the statute, and at the request of the Agricultural Associations, it proposes to pay the landowners for the Tiger Connector 150% of fair market value for their easements. However, Grain Belt is proposing to eliminate the structure payments for the Tiger Connector landowners.

At this time it is unknown how many, if any, of the Tiger Connector landowners might benefit from the 110% plus structures compensation plan versus the 150% compensation plan. However, the Commission is not persuaded by Grain Belt's suggestion that a company undertaking a multi-billion dollar, multistate project such as this is not sophisticated enough to keep track of a few landowners requesting the same payment option as it is offering to all the other landowners along the HVDC Missouri line. Therefore, to mitigate any possible harm to the landowners, the Commission finds it is reasonable and necessary to require Grain Belt to include the option of either compensation plan for the Tiger Connector landowners.

As reflected by the conditions the Commission is ordering below, Grain Belt will be required to file an application for a new certificate, if there are design and engineering changes that are materially different from the Project. Staff recommended that if the CCN

was granted, the Commission should define the term “material change.” However, the Commission was not persuaded that it would serve the public interest to limit the definition of material change to Staff’s specific terms. Therefore, the Commission will not adopt Staff’s proposed definition.

The potential use of the easement for installation, operations, and maintenance of fiber optic and other communication equipment is an element of the Easement Agreement between Grain Belt and individual landowners.²⁵⁸ The Commission notes that nothing precludes the Company offering or a landowner receiving, additional compensation if Grain Belt elects to use or make use of the easement through the sale, lease, or any other manner to a third party or any other entity for the purposes of providing telecommunication, broadband, fiber optic, or similar services in the future. The Commission urges Grain Belt to compensate landowners for any additional utilization of the secured easements.

Additionally, Grain Belt agreed to some reporting requirements regarding being designated as a system restoration resource by a RTO, and not beginning to install transmission facilities on easement property in Missouri, until it has submitted certain documentation to Staff regarding compliance with federal and Missouri environmental permits. The Commission finds that this condition is also reasonable and necessary.

Grain Belt presented evidence, including the study completed by Mr. Loomis that showed the Project would benefit Missouri through job creation and economic benefits to the state of Missouri and local communities where the transmission line is being constructed. The Commission finds it reasonable for Grain Belt to provide the

²⁵⁸ See, Ex. 19, Chandler Direct, Schedule KC-4, para. 2.c.

Commission with a yearly annual report through its first three years of operation of both phases of the transmission line to show the actual economic impact the Project. Thus, the Commission will direct Grain Belt to provide an annual report.

Another provision of concern to the Commission in the Easement Agreement is the provision that states that except in an emergency Grain Belt will provide at least 24-hours' notice to landowners in advance of accessing their property for the first time for the purpose of constructing, modifying, or repairing the facilities.²⁵⁹ The Commission is aware of the condition ordered in the Original CCN, and agreed to by Grain Belt in this case, that Grain Belt will make "reasonable efforts to contact landowners" before entering the right of way.²⁶⁰ The Commission strongly encourages Grain Belt (and its contractors) to enhance landowner communications and relations by making every effort to make contact with landowners and provide as much notice as possible, but at least 72-hours' notice, prior to any initial construction or planned maintenance. In order to monitor these efforts and communications, the Commission finds it reasonable and necessary to direct Grain Belt to include in an annual report the types of notice provided to landowners and the amount of time given for those notices, with explanation of the reasons for any notice given in less than 72-hours.

The Commission highlights that Grain Belt has represented to the Commission that it will appoint a land liaison to the Project to communicate with landowners prior to entry on their properties, during construction operations and after construction activities are completed, to address any concerns and maintain consistent communications.

²⁵⁹ Ex. 19, Chandler Direct, Schedule KC-4, para. 2.f.

²⁶⁰ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358), Condition VI.1.

Additionally, one condition agreed to by Grain Belt and being ordered by the Commission is that after construction is completed, every landowner will be contacted personally to ensure construction and clean-up has been done properly and to settle any damage complaints.²⁶¹

The Commission notes that the easements that Grain Belt proposes to offer to landowners with the various compensation formulas and Protocols are complex. The Commission encourages the landowners to know their rights before entering into any easement negotiations. Section 523.277, RSMo, created the Office of the Ombudsman for Property Rights to provide guidance, but not legal advice, to individuals seeking information regarding the condemnation process and procedures. The Commission finds it reasonable for Grain Belt to include in its Missouri Landowner Protocol contact information for the Ombudsman for Property Rights and a reference to the statute creating it.

If Grain Belt does not comply with the conditions set out in this order (including the Missouri Landowner Protocol,²⁶² Code of Conduct,²⁶³ Agricultural Impact Mitigation Protocol²⁶⁴ and the agreed to conditions²⁶⁵) a complaint may be brought to the Commission in accordance with Section 386.390, RSMo, and Commission Rule 20 CSR 4240-2.070. If, in a complaint proceeding, the Commission determines that Grain Belt has violated the provisions of the Commission's order or other law within the Commission's jurisdiction, the Commission may decide to file an action in circuit court to seek penalties

²⁶¹ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358), Condition VII.5.

²⁶² Ex. 19, Chandler Direct, Schedule KC-5 (Missouri Landowner Protocol – For Right-of-Way Acquisition for the Grain Belt Express).

²⁶³ Exhibit 20, Chandler Surrebuttal, Schedules KC-6 (Code of Conduct).

²⁶⁴ Exhibit 20, Chandler Surrebuttal, Schedules KC-7 (Missouri Agricultural Impact Mitigation Protocol).

²⁶⁵ Ex. 306, Report and Order on Remand, Attachment 1 (formerly Exhibit 206 in File No. EA-2016-0358).

against Grain Belt. In such case, Grain Belt could be subject to penalties payable to the Public School Fund ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo. However, the Commission notes that it does not have jurisdiction over eminent domain proceedings. Decisions regarding eminent domain, including any determination of whether Grain Belt has negotiated in good faith, are the purview of the state courts.²⁶⁶ The Commission also does not have authority over contract disputes and cannot interpret or enforce contracts (such as an easement agreement) or award monetary damages or remedies. Landowners must seek those remedies from the courts.

Finally, the Commission notes that under Section 393.170.3, RSMo, unless Grain Belt exercises the authority conferred by the CCN within two years, the CCN becomes null and void.

V. Summary

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Grain Belt has met, by a preponderance of the evidence, its burden of proof to demonstrate that it is qualified for a certificate of convenience and necessity for the Project under Section 393.170.1, RSMo. Therefore, the Commission will grant the Grain Belt application for the Project, subject to the conditions ordered below.

²⁶⁶ See, Section 523.256, RSMo.

THE COMMISSION ORDERS THAT:

1. Grain Belt's application for a certificate of convenience and necessity filed on August 24, 2022, is granted with the conditions set out below.

2. In accordance with its August 24, 2022 application, Grain Belt is authorized to:

a. relocate the Missouri converter station of the Project from Ralls County to Monroe County and to increase the capacity of the Missouri converter station from 500 MW to 2,500 MW.

b. relocate the AC connector line (the "Tiger Connector") from Ralls County to Monroe, Audrain, and Callaway Counties.

c. construct the Project in two phases:

i. Phase I will comprise construction of an HVDC line beginning in Southwestern Kansas near Dodge City and running to a converter station in Monroe County, Missouri, and continuing with an AC tie line (the "Tiger Connector") in Monroe County, Audrain County, and terminating in Callaway County at points of interconnection with MISO system along the Ameren Missouri 345 kV AC transmission line connecting the McCredie substation and the Montgomery substation and also interconnect with the AECL system at the McCredie 345 kV substation.

ii. Phase II will comprise construction from the converter station in Monroe County approximately 58 miles in Missouri to the Illinois border. Phase II will continue approximately 207 miles through Illinois to

the Indiana border terminating at the substation in Sullivan County, Indiana, and will deliver an additional 2,500 MW into the PJM markets.

iii. The “Financing Conditions,” as set forth in Section I of Attachment 1 to the *Report and Order on Remand* in File No. EA-2016-0358 are adopted with the change that will allow the Project to be constructed in two phases without the necessity to secure financing for both phases before beginning construction of Phase I. The Financing Conditions approved and adopted by the Commission for the Project are:

Grain Belt Express will not install transmission facilities associated with Phase I of the Project on easement property in Missouri until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of Phase I of the Project. Further, GBE will not install transmission facilities associated with Phase II of the Project on easement property in Missouri until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of Phase II of the Project. The term “install transmission facilities” means “to affix permanently to the ground transmission towers or other transmission equipment, including but not limited to bases, poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices and other equipment, accessories, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith, but shall not include (A) preparatory work such as surveys, soil borings, engineering and design, obtaining permits and other approvals from governmental bodies, acquisition of options and easements for right of-way, and ordering of equipment and materials, and (B) site preparation work and procurement and installation of equipment and facilities on property owned in fee by Grain Belt Express including the converter station site.” To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Missouri associated with Phase I and Phase II, respectively:

i. On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by GBE or its parent company for the purpose of funding the respective Phase of the transmission project that, in the aggregate, provide commitments for the total cost of such Phase.

ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities associated with the respective Phase on easement property; or a notification that such installation is scheduled to begin on a specified date.

iii. A statement of the total cost of the respective Phase, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the Phase; right-of way acquisition costs; and other costs necessary to complete the Phase, and certified by an officer of GBE, along with a reconciliation of the total cost of such Phase in the statement to the total cost of such Phase as of the Application to Amend (i.e., \$3.52 billion for Phase I and \$1.43 billion for Phase II as set forth in the Direct Testimony of Aaron White); and property owned in fee by GBE associated with the respective Phase, including the converter station sites.

iv. A reconciliation statement certified by an officer of GBE showing that (1) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total cost of the Phase provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of the Phase (taking into account any planned refinancing of debt).

3. The conditions to which Grain Belt agreed and were approved and adopted as Attachment 1²⁶⁷ to the *Report and Order on Remand* are approved and adopted for the Project. Attachment 1 is attached and incorporated herein by reference, as if fully set forth. Grain Belt is ordered to comply with the conditions in Attachment 1.

4. The conditions to which Grain Belt and Rockies Express Pipeline LLC agreed in Exhibit 205 in File No. EA-2016-0358 continue to be in effect. Exhibit 205 from

²⁶⁷ Previously marked as Exhibit 206 in File No. EA-2016-0358.

File No. EA-2016-0358 is attached as Attachment 2 and incorporated herein by reference as if fully set forth. Grain Belt is ordered to comply with the conditions in Attachment 2.

5. Grain Belt's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Project.

6. If Grain Belt acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt and Staff (Attachment 1) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, Grain Belt shall return possession of the easement to the fee simple title holder ("title holder") within 60 days and cause the dissolution of the easement to be recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt to the title holder shall be due.

7. If the design and engineering of the project is materially different from how the Project is presented in Grain Belt's application filed on August 24, 2022, Grain Belt must file a new CCN application with the Commission for further Commission review and determination to permit and authorize such changes.

8. If any outstanding studies included as conditions raise any new issue(s), then the Commission must be satisfied with how Grain Belt resolves the issue(s).

9. Grain Belt shall comply with the Missouri Landowner Protocol (Attachment 3), including, but not limited to, a Code of Conduct (Attachment 4) and the Missouri

Agricultural Mitigation Impact Protocol (Attachment 5), and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.

10. Grain Belt shall revise its Missouri Landowner Protocol to allow landowners along the Tiger Connector to have the option for compensation at the 110% plus structure payments the same as the landowners along the HVDC line.

11. Grain Belt shall maintain the Missouri Landowner Protocol relating to a decommissioning fund as directed in the *Report and Order on Remand* as follows:

At the commencement of construction of the Project, Grain Belt shall establish a decommissioning fund in an amount reasonably necessary to perform the wind-up activities described below, at Grain Belt's sole cost and expense, for any portion of the Project that has been constructed and installed. The amount of the decommissioning fund shall be increased as construction of the Project progresses sufficient to cover wind-up activities for any Project facilities that have been constructed and installed. The decommissioning fund may be collateralized with a letter of credit or cash, or any combination thereof. In any circumstance in which the Project is retired from service or abandoned prior to service, Grain Belt shall promptly perform the following wind-up activities:

- a. dismantling, demolishing and removing all equipment, facilities and structures;
- b. terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located;
- c. securing, maintaining and disposing of debris with respect to the Project facilities; and
- d. performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property.

12. Grain Belt shall promptly file with the Commission a copy of each annual report that Grain Belt or Invenenergy files with FERC.

13. Grain Belt shall include the following information in its Missouri Landowner Protocol:

Section 523.277, RSMo, created the Office of the Ombudsman for Property Rights, appointed by the Office of the Public Counsel, to provide guidance to individuals seeking information regarding the condemnation process and procedures. Landowners can contact the Ombudsman at:

Phone: 573.751.4857
Fax: 573.751.5562
Email: mopco@opc.mo.gov
Website: eminentdomain.mo.gov

14. Grain Belt shall provide annual reports every year until the line has been in service three full years. Staff and Grain Belt shall jointly develop a reporting format, metrics, and schedule for these reports and file a proposal for the composition of the reports no later than February 29, 2024. The process, review, retention of the reports, and reporting conditions should be narrowly tailored to consolidate the information, and to avoid requiring duplicate information provided to other agencies. The reports that Grain Belt shall provide are as follows:

a. Actual data regarding the economic impact of job creation in the state of Missouri including: the number of Missourians employed, total gross wages paid to Missourians, total payroll taxes paid on behalf of employed Missourians, number of contracted entities domiciled in Missouri, landowner payments and protocol complaint resolution, eminent domain proceedings, damage disputes, and any other data deemed appropriate to address concerns expressed by the Commission that would be considered valuable to provide in such report(s).

b. Information regarding the types of notice provided to landowners and the amount of time given for those notices, with explanation of the reasons for any notice given to landowners in less than 72-hours of accessing their property.

c. Information regarding the number and types of landowner complaints and obligations received and tracked in accordance with the Missouri Landowner Protocol, Section 6 and elsewhere; how those complaints and obligations were resolved or addressed; and within what timeframe they were resolved or addressed.

15. All waivers from Ordered Paragraph 11 in the *Report and Order on Remand* remain in effect.²⁶⁸

16. This order shall become effective on November 11, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).
Hahn, C. dissents.

Dippell, Chief Regulatory Law Judge

²⁶⁸ Effective August 28, 2019, the Commission's rules were transferred from Title 4, Division 240 of the Code of State Regulations to Title 20, Division 4240 of the Code of State Regulations.

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence)
 Rivers Utility Operating Company, Inc. for)
 Certificates of Convenience and Necessity) **File No. WA-2023-0398**
 To Provide Water and Sewer Service in an)
 Area of Lincoln County, Missouri (Quail Run))

ORDER APPROVING TRANSFER OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§45. Water

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

SEWER

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day of
October, 2023.

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc. for)
Certificates of Convenience and Necessity)
To Provide Water and Sewer Service in an)
Area of Lincoln County, Missouri (Quail Run))

File No. WA-2023-0398

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: October 18, 2023

Effective Date: November 17, 2023

Procedural History

On May 24, 2023, Confluence Rivers Utility Operating Company, Inc. (Confluence) filed the above-referenced applications.¹ Confluence seeks to acquire all or substantially all of the water and sewer system assets of the currently unregulated systems of Lincoln County Water and Sewer, LLC (LCWS).

Confluence also asks for a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems. Confluence is a “water corporation,” a “sewer corporation,” and “public

¹ The Commission consolidated File Nos. WA-2023-0398 and SA-2023-0396.

utility” as those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. If the Commission approves Confluence’s application, Confluence would provide water and sewer service for LCWS’ 434 customers.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On September 12, 2023, the Staff of the Commission (Staff) filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions. On September 22, 2023, Confluence stated that it accepted Staff’s recommended conditions but one, and requested an amendment to that condition. Staff responded on September 25, 2023, accepting Confluence’s requested amendment.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule and no party objected to Confluence’s application or Staff’s recommendation.

Discussion

Certificate of Convenience and Necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”² The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity that are known as the Tartan factors.

² Section 393.170.3, RSMo. (Supp. 2022).

The *Tartan* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.³

There is a need for the service, as the current customer base has a need and desire for water and sewer service. Confluence is qualified to provide the service, as it Confluence provides service to approximately 4,830 water connections and 5,053 sewer connections throughout Missouri. Confluence has the financial ability to provide the service as the purchase does not have a negative impact on the purchaser's capital structure or financial ratios. The proposal is economically feasible as Confluence has adequate resources to operate its utility systems. The proposal promotes the public interest as the current owner has failed to properly operate and maintain the sewer system. This will be resolved by Confluence purchasing the system and making the appropriate improvements.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to Confluence have been satisfied and that it is in the public's interest for Confluence to provide water and sewer service to the customers currently served by LCWS. Further, the Commission finds that Confluence possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from

³ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

LCWS. Thus, the Commission will authorize the transfer of assets and grant Confluence the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Waiver of 60-day Notice Rule

Confluence's application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). Confluence asserts there is good cause for granting such waiver because it has filed a verified declaration that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Confluence is granted permission to acquire the water and sewer system assets of LCWS.
2. Confluence is granted a certificate of convenience and necessity to provide water and sewer service in the LCWS area described in the map and legal description Confluence provided to Staff, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:
 - a. The Commission approves existing LCWS water rates for the LCWS systems;
 - b. Confluence shall submit tariff sheets, to become effective before closing on the assets, to include adequately identified service area maps, service area written descriptions, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 12 and 13, applicable to water and sewer service, respectively;

- c. Confluence shall notify the Commission of closing on the assets within 5 days after such closing;
- d. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until Confluence determines that the transfer of the assets will not occur;
- e. If Confluence determines that a transfer of the assets will not occur, Confluence shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require Confluence to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the LCWS service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the LCWS service area in both the water and sewer tariffs;
- f. Confluence shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
- g. Confluence shall adopt the depreciation rates ordered for Confluence in Case No. WR-2023-0006;
- h. Confluence shall provide training to its call center personnel regarding rates and rules applicable to LCWS customers;
- i. Confluence shall distribute to LCWS customers an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;
- j. Confluence shall provide to the Customer Experience Department ("CXD") Staff an example of its actual communication with LCWS customers regarding its acquisition and operations of the water, and how customers may reach Confluence, within ten (10) days after closing on the assets;
- k. Confluence shall include LCWS customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

- l. Confluence shall provide to the CXD Staff a sample of five (5) billing statements from the first three month's billing for LCWS Quail Ridge within ten (10) days of the billings;
 - m. Confluence shall file notice in this case outlining completion of the above recommended training, customer communications, notifications and billing within ten (10) days after such communications and notifications;
 - n. Confluence shall rehabilitate the existing elevated storage tank or replace with new construction within three years;
 - o. Confluence shall repair the lagoon berm within the first year. These repairs will include regrading, filling, and seeding the disturbed areas, as well as placing rip-rap around the inside of the lagoon banks to prevent erosion; and;
 - p. Confluence shall install additional treatment for ammonia within three years of the date of closing if proposed aeration enhancement is not successfully achieving ammonia limits.
3. Confluence is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.
4. The 60 day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.
5. This order shall become effective on November 17, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Confluence Rivers Utility	)	
Operating Company, Inc.'s Request for	)	
Authority to Implement General Rate	)	<u>File No. WR-2023-0006</u>
Increase for Water Service and Sewer	)	
Service Provided in Missouri Service	)	
Areas	)	

REPORT AND ORDER

ACCOUNTING

§2. Obligation of the utility

§8. Uniform accounts and rules

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

§31. Acquisition of property expenses

In analyzing the recovery of certain transaction costs, the Commission relied on the underlying premise that founded the distinction of transaction costs versus transition costs – the net original cost rule. The rule states “Generally, transaction costs which do not benefit the ratepayer and are only costs of ownership are not recoverable from customers.”

§38.1. Book/tax timing differences

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

DEPRECIATION

§12. Methods of calculation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

ELECTRIC

§29. Rate of return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

§29. Rate of return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

§29. Rate of return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

EVIDENCE, PRACTICE AND PROCEDURE**§4. Presumption and burden of proof****§26. Burden of proof**

Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.

§24. Procedures, evidence and proof

In determining whether a utility's conduct was prudent, the Commission will judge that conduct by: asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. The Commission's responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

EXPENSE**§73. Expenses incurred in acquisition of property**

In analyzing the recovery of certain transaction costs, the Commission relied on the underlying premise that founded the distinction of transaction costs versus transition costs – the net original cost rule. The rule states "Generally, transaction costs which do not benefit the ratepayer and are only costs of ownership are not recoverable from customers."

RATES**§12. Capitalization and security prices**

The Commission found that a proposed hypothetical capital structure of 50% equity and 50% debt is appropriate. The Commission reasoned that ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while

the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. Each side of the ratemaking calculation, rate payers and shareholders, would be protected from the other having a greater share.

§12. Capitalization and security prices

§41. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

§12. Capitalization and security prices

§41. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

§41. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.

§41. Return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

§74. Retroactive rates

The Commission found that reaching back to include actual revenues or expenses in prior years for determining expenses in the current rate case would be retroactive ratemaking.

SEWER

§7. Jurisdiction and powers of the State Commission

§15. Return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

§15. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

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§15. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

§15. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.

§18. Depreciation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

§21. Accounting

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

WATER**§8. Jurisdiction and powers of the State Commission****§17. Return**

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

§17. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

§17. Return

The Commission found that a proposed hypothetical capital structure of 50% equity and 50% debt is appropriate. The Commission reasoned that ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. Each side of the ratemaking calculation, rate payers and shareholders, would be protected from the other having a greater share.

§17. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

§17. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.

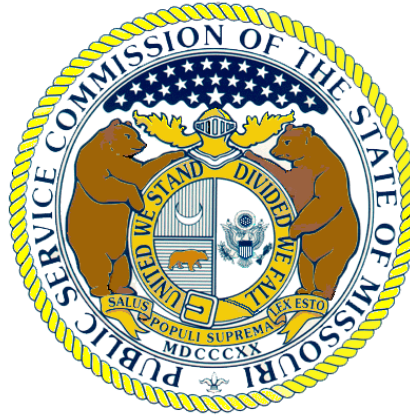
§20. Depreciation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

§23. Accounting

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Confluence Rivers Utility)
Operating Company, Inc.'s Request for)
Authority to Implement a General Rate)
Increase for Water Service and Sewer)
Service Provided in Missouri Service)
Areas)

File No. WR-2023-0006

Tracking Nos. YW-2023-0113
and YS-2023-0114

REPORT AND ORDER

Issue Date: October 25, 2023

Effective Date: November 4, 2023

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Regulatory Law Judge: Charles Hatcher

REPORT AND ORDER

Procedural History

On December 21, 2022, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or “the Company”) filed proposed tariffs to produce an additional \$1,286,748 in annual water revenues from 26 water service areas and an additional \$1,862,116 in annual sewer revenues from 39 sewer service areas.¹ The proposed rate changes differed by service area due to the variety of rates currently in use. The tariffs had a proposed effective date of January 20, 2023.

The Commission set the test year to be the twelve-month period ending June 30, 2022, with an updated/known and measurable period through January 31, 2023, with no true-up period. To allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the proposed tariffs were suspended until November 20, 2023.²

The Commission directed notice of the filings and set an intervention deadline. No requests to intervene were received.

A series of six local public hearings were held between the dates of June 12 and June 26.³ An evidentiary hearing was held from August 10 to 16.⁴ Prefiled testimony was filed according to the procedural schedule. Exhibits and live testimony were provided during the evidentiary hearing, including two post-hearing exhibits. Initial post-hearing briefs were filed on September 8, and reply briefs on September 19.

¹ File No. SR-2023-0007 was consolidated into File No. WR-2023-0006 on January 4, 2023.

² From this point forward, date references are to 2023 unless otherwise noted.

³ Transcript Volumes (Tr. Vols.) 1-6.

⁴ Tr. Vols. 8, 9, 9.5, 10, 10 in camera, and 11. The Commission acknowledges the unique numbering.

The parties reached agreement on a number of issues and submitted a Unanimous Partial Stipulation and Agreement as well as an unopposed Nonunanimous Partial Stipulation and Agreement. After the Commission approved both agreements,⁵ six issues as presented by the parties remained for Commission decision. This Report and Order addresses those six remaining issues.

General Findings of Fact

1. Confluence Rivers is a certificated Missouri “water corporation”, “sewer corporation”, and “public utility” as those terms are defined at Section 386.020, RSMo (Supp. 2022).

2. Confluence Rivers has certificates of service for water and/or sewer service in 27 non-contiguous Missouri counties.⁶ Confluence Rivers owns and operates 26 water systems across Missouri.⁷

3. The Commission approved the consolidation/merger of Confluence Rivers, Hillcrest Utility Operating Company, Elm Hills Utility Operating Company, Osage Utility Operating Company (Elm Hills), Raccoon Creek Utility Operating Company (Raccoon Creek), and Indian Hills Utility Operating Company, Inc. (Indian Hills), with Confluence Rivers as the surviving company. That merger was completed January 1, 2022.⁸

4. Prior to December 31, 2021, the service areas included in this rate case were divided among the six separate operating entities.⁹

5. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo (2016) and by Commission Rule 20 CSR 4240-2.010(10).

⁵ *Order Approving Agreements*, issued September 27.

⁶ Ex. 4, Cox Direct, p. 4.

⁷ Ex. 106, Roos Direct, p. 2; and Ex. 6, Cox Rebuttal Schedule JMC-R-4.

⁸ Ex. 4, Cox Direct, p. 18, citing File No. WM-2021-0412.

⁹ Ex. 17, Thies Direct, p. 17.

6. The Staff of the Commission (Staff) is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

7. The parties presented six issues for determination by the Commission, listed below:

- a. Income Taxes;
- b. Acquisition Costs;
- c. Timesheets;
- d. Cost of Capital;
- e. Advanced Meter Infrastructure;
- f. Disallowance based on third-party contract operators.¹⁰

General Conclusions of Law

A. Confluence Rivers is a public utility, sewer corporation, and water corporation as those terms are defined in Section 386.020, RSMo (Supp. 2023).¹¹ By the terms of the statute, Confluence Rivers is a water and sewer corporation and is subject to regulation by the Commission pursuant to Chapters 386 and 393, RSMo.

B. The Commission's subject matter jurisdiction over Confluence Rivers' rate increase requests is established under Section 393.150, RSMo.

C. Confluence Rivers can charge only those amounts set forth in its tariffs.¹²

D. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Confluence Rivers may charge customers for water and sewer service.

E. Utilities are required to provide safe and adequate service.¹³

¹⁰ Order of Witnesses, filed August 30, 2022.

¹¹ All statutory references are to the 2016 edition, unless otherwise noted.

¹² Sections 393.130 and 393.140, RSMo.

¹³ Sections 393.130 and 393.140, RSMo.

F. In determining the rates Confluence Rivers may charge its customers, the Commission is required to determine whether the proposed rates are just and reasonable.¹⁴

G. Confluence Rivers has the burden of proving the proposed rates are just and reasonable, pursuant to Section 393.150.2, RSMo, “[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . water corporation or sewer corporation . . .”

H. In order to carry its burden of proof, Confluence Rivers must meet the preponderance of the evidence standard.¹⁵ In order to meet this standard, the Company must convince the Commission it is “more likely than not” that the proposed rate increases are just and reasonable.¹⁶

I. Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony.”¹⁷

J. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.¹⁸

K. The Commission’s interpretation of statutes within its purview are entitled to great weight.¹⁹

¹⁴ Section 393.150.2, RSMo.

¹⁵ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

¹⁶ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

¹⁷ *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

¹⁸ *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

¹⁹ *State ex rel. Sprint Mo., Inc. v. Pub. Serv. Comm’n of State*, 165 S.W.3d 160, 164 (Mo. banc 2005) (citing *Foremost–McKesson, Inc. v. Davis*, 488 S.W.2d 193, 197 (Mo. banc 1972)).

INCOME TAXES

Findings of Fact Regarding Income Taxes

Net operating losses

8. Confluence Rivers' entities elected not to claim accelerated depreciation for federal income tax purposes. Therefore the net operating loss balance does not reflect deferred taxes attributable to accelerated depreciation, and normalization rules of the Internal Revenue Code (IRC) do not apply.²⁰

9. Income tax expense, for ratemaking purposes, is a hypothetical construct whereby rate base is multiplied by the authorized rate of return and then the statutory tax rate is applied to determine income tax expense.²¹

10. A net operating loss occurs for income tax purposes when a utility's revenues are not enough to cover its expenses.²² Stated another way, a net operating loss results when a utility does not have enough taxable income to utilize all the tax deductions to which it would otherwise be entitled.²³

11. If a company has taxable income, a net operating loss from a prior year can be used to offset taxable income, thus the company's taxes due will be reduced. If the net operating loss is greater than the taxable income and can be used to offset all of the taxable income the company will not have to pay income taxes for that year.²⁴

²⁰ Ex. 16, Seltzer Rebuttal, p. 4.

²¹ Ex. 16, Seltzer Rebuttal, p. 7.

²² Tr. Vol. 9, p. 215.

²³ Ex. 123, Bolin Surrebuttal, p. 1.

²⁴ Ex. 101, Bolin Direct, p. 4.

12. Confluence Rivers will have a cumulative, or carryover, net operating loss of approximately \$9 million as of the likely effective date of new rates in this rate case, November 20.²⁵

13. The Tax Cuts and Jobs Act limits the net operating losses generated after January 1, 2018 to an 80% offset. A taxpayer will only be able to utilize 80% of the net operating losses to offset taxable income. Net operating losses generated prior to January 1, 2018, are not subject to the 80% limitation and can be deducted at 100%.²⁶

14. Confluence Rivers' net operating loss is expected to exist for an estimated six years.²⁷

15. No recovery of net operating losses in rates is being sought by Confluence Rivers in this rate case.²⁸

16. There is a prohibition on retroactive ratemaking in Missouri.²⁹

17. Confluence Rivers' net operating losses are not the result of timing differences. Tax timing differences occur when the timing used in reflecting a cost (or revenue) for financial reporting purposes (book purposes) is different from the timing required by the Internal Revenue Service (IRS) in determining taxable income (tax purposes).³⁰

²⁵ Tr. Vol. 9, p. 38 (designating the amount as non-confidential), p. 52, and pp. 54-55. See *also* Ex. 101, Bolin Direct, pp. 3-4.

²⁶ Ex. 101, Bolin Direct, p. 5.

²⁷ Tr. Vol. 9, p. 160.

²⁸ Tr. Vol. 10, p. 62.

²⁹ Tr. Vol. 9, p. 98.

³⁰ Ex. 123, Bolin Surrebuttal, p. 2.

18. When a company uses accelerated depreciation, net operating losses are used to offset the money collected from customers recorded as Accumulated Deferred Income Taxes (ADIT).³¹

19. OPC considers the taxes applicable to the difference between accelerated depreciation expense used for income tax purposes and straight line depreciation expense used for ratemaking to be a loan which supports the ADIT reduction to rate base.³²

20. Utility customers benefit up front when shareholders pay the utility's excess operating expenses which are not recovered through rates, and which result in the net operating losses for income tax purposes.³³

21. The income tax expense included in this case is to pay future income taxes on Confluence Rivers' taxable income.³⁴

22. Retroactive ratemaking would be an effort to include in present rates past expenses that were not included in rates earlier.³⁵

Income tax collection

23. The issue at hand is that the Company could collect more income tax expense in rates than it actually remits to the IRS for a time.³⁶

24. Confluence Rivers argues that ratemaking treatment for income taxes allows income taxes to be calculated based on the return granted in this rate case whether

³¹ Tr. Vol. 9, p. 158.

³² Tr. Vol. 9, p. 220.

³³ Tr. Vol. 9, pp. 64-65.

³⁴ Tr. Vol. 9, p. 121.

³⁵ Tr. Vol. 9, p. 213.

³⁶ Tr. Vol. 9, p. 82.

that amount is ultimately remitted to the IRS or not. This is consistent with the ratemaking treatment Staff has used for Confluence Rivers in past rate cases.³⁷

25. In past rate cases dealing with Confluence Rivers or its affiliates, Staff did not recommend offsetting income tax expense with net operating loss amounts. Staff did include the net operating loss in this case due to its relative size, \$9 million.³⁸

26. While taking each utility rate case where a net operating loss exists on its own merit – Staff agreed that the threshold of inclusion or exclusion of the net operating loss in determination of the income tax expense to include in the revenue requirement would be an arbitrary number.³⁹

27. It is the practice of Staff to include the amount necessary to pay income taxes when calculating rates for all utilities.⁴⁰ Previously in Confluence Rivers' rate cases, Staff included income tax as part of the revenue requirement even when net operating losses existed.⁴¹

28. Staff differentiated the treatment of net operating losses in Confluence Rivers' prior rate cases, to the extent they included a net operating loss. Staff may have included a net operating loss for a variety of reasons unrelated to following a preset policy on net operating losses – such as the type of case being a Staff-assisted rate case where the Staff did the bulk of the workload and the timeframe was shorter.⁴²

³⁷ Tr. Vol. 9, p. 88.

³⁸ Tr. Vol. 9, p. 145.

³⁹ Tr. Vol. 9, pp. 171-172.

⁴⁰ Tr. Vol. 9, p. 119.

⁴¹ Tr. Vol. 9, pp. 129-130.

⁴² Tr. Vol. 9, p. 175.

29. Confluence Rivers adopted the rates of the water and wastewater utilities when it acquired those utilities' assets. The increased operating costs, over and above those reflected in those adopted rates, were borne by Confluence Rivers.⁴³

30. Many of the utility systems acquired by Confluence Rivers have not increased rates in decades. As a result, the rates did not keep up with increases in operating costs and the need to reinvest in system assets.⁴⁴

31. The net operating losses were the result of having more deductible expenses than revenues for income tax purposes.⁴⁵

32. Upon acquisition, Confluence Rivers initiated a \$1.84 million upgrade of the Indian Hills water system.⁴⁶

33. The 2019 Indian Hills federal income tax return indicates that deductible expenses exceeded revenues resulting in a net operating loss carryforward.⁴⁷

34. The Commission's Report and Order in Indian Hills' rate case, File No. WR-2017-0259, included a rate base of \$663,596 and a return of 9.375%. The revenue requirement therefore included earnings of approximately \$62,212 ($\$663,596 \times 9.375\%$) to be included in annual revenues.⁴⁸

35. Staff offered an alternative to including the net operating losses in the calculation of income tax expense that would track the difference between what is actually paid in taxes and what is billed as income tax expense in rates.⁴⁹

⁴³ Ex. 16, Seltzer Rebuttal, pp. 8-9.

⁴⁴ Ex. 19, Thies Surrebuttal, p. 9.

⁴⁵ Tr. Vol. 9, p. 147.

⁴⁶ Ex. 4, Cox Direct, p. 11.

⁴⁷ Ex. 222C, Indian Hills' tax return, p. 9.

⁴⁸ Ex. 225, Indian Hills Report and Order from WR-2017-0259.

⁴⁹ Tr. Vol. 9, pp. 116-117.

36. For a certain period of time the income tax expense included in rates set in this case will provide a cash benefit to Confluence Rivers because for tax purposes it will be able to reduce its taxable income by its net operating loss carryforwards.⁵⁰

37. Absent the net operating losses, OPC would include income tax expense in Confluence's rates.⁵¹

38. OPC witness Riley acknowledged that if the Commission sets the income tax to include the net operating loss, when income taxes come due the Company will need to seek a general rate increase via a rate case in order to include its income taxes in its revenue requirement.⁵²

Conclusions of Law Regarding Income Taxes

M. All water and sewer utilities under the jurisdiction of the Commission are required by 20 CSR 4240-50.020 (1) and 20 CSR 4240-61.020 (1) to follow the Uniform System of Accounts (USoA) for their designated class. The following accounts are designated for Accumulated Deferred Income Taxes and are applicable to Confluence Rivers.

281. Accumulated Deferred Income Taxes-Accelerated Amortization.

A. This account shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of accelerated (5-year) amortization of (1) certified defense facilities in computing such taxes as permitted by Section 168 of the Internal Revenue Code of 1954 and (2) certified pollution control facilities in computing such taxes as permitted by Section 169 of the Internal Revenue Code of 1954 as compared to the depreciation deduction otherwise appropriate and allowable for tax purposes according to the straight line or other nonaccelerated depreciation method and appropriate estimated useful life for such property.

⁵⁰ Tr. Vol. 9, p. 121.

⁵¹ Tr. Vol. 9, p. 220.

⁵² Tr. Vol. 9, pp. 219-220.

B. This account shall be debited and account 411, Income Taxes Deferred in Prior Years - Credit shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior years of accelerated instead of nonaccelerated or nonliberalized depreciation resulting in the deferral of taxes in such prior years as described in paragraph A above. Such debit to this account and credit to account 411 shall in general represent the effect on taxes payable for the current year of the unavailability or reduced amount of a depreciation deduction for tax purposes with respect to any depreciable property for which accelerated amortization was used in prior years as compared to the depreciation deduction otherwise available and appropriate for such property considering its estimated useful life according to the depreciation method ordinarily used by the utility for similar property in computing depreciation for tax purposes by a nonaccelerated or nonliberalized depreciation method.

C. Records with respect to entries to this account as described above and the account balance shall be so maintained as to show the factors of calculation and the separate amounts applicable to the facilities of each certification or amortization for tax purposes.

282. Accumulated Deferred Income Taxes-Liberalized Depreciation.

A. This account shall be credited and account 410. Provision for Deferred Income Taxes shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the use of liberalized depreciation in computing such taxes as permitted by Section 167 of the Internal Revenue Code of 1954, as compared to the depreciation deduction otherwise appropriate and allowable for tax purposes for similar property for the same estimated useful life according to the straight line or other nonliberalized method of depreciation.

B. This account shall be debited and account 411, Income Taxes Deferred in Prior Years - Credit shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior years of liberalized depreciation for income tax purposes and deferral of taxes in such prior years as described in paragraph A above. Such debit to this account and credit to account 411, shall in general represent the effect on taxes payable for the current year of the smaller amount of depreciation permitted for tax purposes for the current year with respect to any depreciable property for which liberalized depreciation was used in prior years, as compared to the depreciation deduction otherwise appropriate and available for similar property of the same estimated" useful life according to the straight line or other nonliberalized

depreciation method ordinarily used by the utility in computing depreciation for tax purposes.

C. Records with respect to entries to this account, as described above and the account balance shall be so maintained as to show the factors of calculation and the separate amounts applicable to the plant additions of each vintage year for each class, group, or unit as to which different liberalized depreciation methods and estimated useful lives have been used. The underlying calculations to segregate and associate deferred tax amounts with the respective vintage years may be based on reasonable methods of approximation if necessary consistently applied.

Account 283. Accumulated Deferred Income Taxes - Other.

A. This account, when its use has been authorized by the Commission for specific types of tax deferrals shall be credited and account 410. Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the current use of deductions' other than accelerated amortization or liberalized depreciation in the computation of income taxes, which deductions for general accounting purposes will not be fully reflected in the utility's determination of annual net income until subsequent years.⁵³

N. Courts have described the retroactive ratemaking doctrine as follows:

Section 393.140(11) provides that “[n]o corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time.” “The filed rate doctrine ... precludes a regulated utility from collecting any rates other than those properly filed with the appropriate regulatory agency.” “This aspect of the filed rate doctrine constitutes a rule against retroactive ratemaking or retroactive rate alteration.” Retroactive rate-making is defined as “the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.”⁵⁴

⁵³ National Association of Regulatory Utility Commissioners (“NARUC”) Uniform System of Accounts for Class A & B Water (1973) and Wastewater (1976).

⁵⁴ State ex rel AG Processing v Public Service Com'n, 340 S.W.3d 146, 150 (2011), quoting State ex rel. AG Processing, Inc. v. Public Service Com'n, 311 S.W.3d 361, which cited *State ex rel. Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 59 (Mo. banc 1979).

Issues Presented by the Parties

- a. *How should income tax expense be set for purposes of establishing the revenue requirements?*
- b. *If the Commission allows Confluence to recover income tax expense in an amount greater than what would be remitted to the IRS in a given tax year, should the excess income tax expense be booked to a deferred liability account that will offset rate base?*

Decision Regarding Income Tax

The Commission finds that setting an income tax expense without consideration of Confluence Rivers' net operating loss carryforward balance is appropriate in this circumstance. Income tax expense, a hypothetical construct used in ratemaking, is the result of multiplying the rate base by the Commission authorized rate of return and then the statutory tax rate. This provides the utility recovery of the income tax expense associated with its authorized return on its investment.

Staff in prior Confluence Rivers' rate cases has consistently applied this methodology for income tax expense. This is the only income tax expense included in rates and there is no component within that methodology that considers the actual revenues or deductions reported on federal or state income tax returns. Confluence Rivers proposed no alternative treatment of income taxes for this case.

Staff in this case is asking the Commission to apply a different methodology, to offset income tax expense included in the revenue requirement by net operating losses recognized by Confluence Rivers for income tax purposes from past years. The result of Staff's proposed methodology would be to eliminate income tax expense from Confluence Rivers' revenue requirement.

Historically, ratemaking has only considered net operating losses in the context of ADIT. ADIT generally results from the use of accelerated depreciation for income tax

purposes and the requirement that straight line depreciation be used for ratemaking. This results in a depreciation expense deduction for tax purposes typically higher than what is included in utility rates. Therefore, actual income tax expense is reduced below the amount recovered in rates.

The IRC requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes. Accelerated depreciation allows earlier recognition of depreciation expense than straight line depreciation. Both depreciation methods result in a plant value of zero at the end of its useful life. The cumulative amount of income taxes paid over time compared to the income taxes included in rates demonstrates that customers are typically contributing moneys above what is being paid for income taxes. This difference between income taxes actually paid and income tax expense included in utility rates is quantified as ADIT.

The Commission has typically authorized that the ADIT balance be deducted from rate base to eliminate a return on customer moneys above what is actually being paid for income taxes.

A net operating loss results when, for income tax purposes, allowable expense deductions exceed revenues, eliminating taxable income. The IRC currently allows net operating losses to be carried forward to be used in future years to offset revenues and reduce taxable income by up to 80%.

The Commission has authorized a specific treatment of net operating losses to offset the ADIT reduction to rate base, considering that when a net operating loss occurs the entire accelerated depreciation expense deduction was likely not realized for income

tax purposes. There is no evidence in the record to indicate the Commission has authorized any other treatment of net operating losses for ratemaking.

Confluence Rivers has not used accelerated depreciation for income tax purposes and has not indicated that it has any ADIT accounts with balances. For NARUC USoA class A and B water and sewer companies in Missouri, accounts 281-283 are used to record ADIT.

The allowable expense deductions of the Company exceeded revenues for income tax purposes in the prior years that the Confluence Rivers net operating losses were generated. Rates in those prior years did not generate enough revenues to cover operating expenses. The Confluence Rivers net operating losses were not the result of accelerated depreciation allowing for ADIT treatment or the net operating losses being used to offset ADIT.

Net operating losses are a function of income taxes created by the federal government to allow future recovery of current recognized excess deductible expenses through the reduction of future income taxes.

Confluence Rivers has purchased many water and sewer utilities in Missouri while leaving the existing utility rates in place. Some utility systems purchased by Confluence Rivers have not had rate increases for many years. Confluence Rivers has made capital improvements through investments and has maintained the utility system operations while actual costs have exceeded revenues generated by the existing rates.

Rate cases allow for recovery of earnings on plant investments and the current costs to provide services through utility rates. Theoretically, only earnings create taxable income because rates provide recovery of all expenses. Revenues less expenses equals taxable income. When there is no taxable income there are no earnings. When expenses

exceed revenues, net operating losses are recognized equal to the excess expense amount. The existence of net operating losses indicates that Confluence Rivers has paid for expenses it did not recover from customer revenues.

Indian Hills is an example of where rates set in February 2018 included earnings on rate base. A review of Indian Hills' 2019 federal income tax return, after those rates had been in effect for a full calendar year indicated that deductible expenses exceeded revenues resulting in a net operating loss. Confluence Rivers did not earn a return on its investment in Indian Hills in 2019.

Reaching back to include actual revenues or expenses in prior years for determining expenses in the current rate case would be retroactive ratemaking. The Confluence Rivers expense deductions of prior calendar year tax returns that resulted in the net operating losses will never be recovered in rates because of the prohibition on retroactive ratemaking.

Without accelerated depreciation, Confluence Rivers has no ADIT or income tax timing difference for ratemaking. Timing differences allow for the deferral of income tax expense that will reverse over time. With ADIT, the timing difference for depreciation expense recognition reverses over time. No evidence has been presented of the Commission's consideration of net operating losses in setting rates outside of ADIT rate base treatment.

Staff's alternative proposal is to recognize the difference between actual income tax paid in future years and income tax expense included in rates. The excess income tax expense included in rates would be deducted from rate base, similar to the treatment of ADIT. Net operating losses created during years where Confluence Rivers received no earnings and paid for expenses it did not recover from customer revenues would be used

to reduce actual income tax paid in future years. On its face this would appear to be unequitable in addition to being retroactive ratemaking. No evidence of the impact of higher or lower revenues on income tax paid was offered even though this would be a fundamental component of the taxable income tax equation. Any variation from expense levels included in rates could also impact the amount of income taxes paid although this was not addressed in testimony or any evidence provided.

For the above reasons, income tax expense for the revenue requirement should be calculated in this rate case consistent with the methodology used by Staff in prior Confluence Rivers' rate cases. Confluence Rivers is directed to calculate income tax expense by multiplying the rate base by the Commission authorized rate of return and then the statutory tax rate.

Further, the Commission does not find it appropriate given the facts in this case to defer or make an offset to rate base of the difference between actual income taxes paid in the future by Confluence Rivers and the income tax expense recovered through rates, and no such deferral or offset will be authorized.

ACQUISITION COSTS

Findings of Fact Regarding Acquisition Costs

The Costs

39. As a business model, Confluence Rivers, via CSWR, purchases systems that are distressed.⁵⁵

40. The initial contract signed by Confluence Rivers and the utility system owner is not the final purchase agreement that transfers title. Acquisition costs can be, and in this case were, incurred extensively after the initial contract is signed.⁵⁶

⁵⁵ Ex. 19. Thies Surrebuttal, p. 8.

⁵⁶ Tr. Vol. 9.5, pp.40-42.

41. Submitted acquisition costs in this case include expenditures that allowed the Company to determine the feasibility of capital improvements that will need to be made to the systems. They also included the legal and other costs associated with securing clean title to the property, confirming proper easement access to the system components, and the costs to appropriately file required acquisition documentation with the Commission.⁵⁷

42. Confluence Rivers recorded acquisition-related costs to various plant-in-service accounts.⁵⁸

43. Once a particular utility system acquisition has been completed, it is Confluence Rivers' procedure to transfer amounts recorded in Preliminary Survey and Investigation Charges (account 183) to Construction Work in Progress (account 107), and ultimately to a utility plant in service account, for inclusion in rate base. In its filing, the Company had recorded \$1,218,969 of these acquisition-related expenditures in Utility Plant in Service accounts.⁵⁹

44. Confluence Rivers water systems have acquisition costs ultimately posted to 1973 NARUC USoA Class A and B account 343-Transmission and Distribution Mains. Sewer systems have acquisition costs ultimately posted to 1976 NARUC USoA Class A and B accounts 352.1-Collection Sewer-Force and 352.2-Collection Sewers-Gravity.⁶⁰

45. Confluence Rivers argues that the acquisition costs were handled according to the accounting instructions laid out in the NARUC USoA. Confluence Rivers

⁵⁷ Ex. 18, Thies Rebuttal, p. 10.

⁵⁸ Ex.110, Majors Direct, p. 14.

⁵⁹ Ex. 18, Thies Rebuttal, p.11.

⁶⁰ Ex. 23, DR 66.

included a partial definition of account 183-Preliminary Survey and Investigation Charges, in its testimony:

This account shall be charged with all expenditures for preliminary surveys, plans, investigations, etc. made for the purpose of determining the feasibility of project under contemplation. If construction results, this account shall be credited and the appropriate utility plant account charged.⁶¹

46. Confluence Rivers' testimony omitted portions of the NARUC USoA description of account 183-Preliminary Survey and Investigation Charges. Part B of the account description states:

The records supporting the entries to this account shall be so kept that the utility can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges.

Note. - The amount of preliminary survey and investigation charges transferred to utility plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to utility plant.⁶²

47. In prefiled testimony filed June 29, 2023, the Company references an amount of \$1,218,969 in acquisition costs.⁶³

48. Staff categorized the acquisition costs identified. The acquisition costs categorized by Staff were \$987,852 and the break-down is as follows:

- a. Engineering-Admin - \$208,525;
- b. Engineering-GIS⁶⁴ - \$59,828;
- c. Engineering-Survey - \$166,353;

⁶¹ Ex. 18, Thies Rebuttal, p. 10.

⁶² National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts for Class A & B Water (1973) and Wastewater (1976).

⁶³ Ex. 18, Thies Rebuttal, p. 11.

⁶⁴ Geographic Information System.

- d. Legal-Real Estate - \$430,667;
- e. Legal-Regulatory - \$114,272;
- f. No description - \$8,207.⁶⁵

49. Staff's acquisition cost adjustment would reduce rate base and the return included in the revenue requirement. Staff's adjustment is not to expenses.⁶⁶

50. Staff recommended a disallowance of \$987,852 in acquisition costs from Confluence Rivers' plant accounts.⁶⁷

System Conditions When Acquired

51. In Confluence Rivers' acquisition of Missouri water and sewer systems, 68 of them were out of compliance with the Missouri Department of Natural Resources (DNR) when purchased.⁶⁸

52. Many of the systems Confluence Rivers purchased were done so at the request of DNR and most of those required emergency operations.⁶⁹

53. Confluence Rivers has closed on a property with a contested access to the plant.⁷⁰

54. If the seller does not own all of the assets they claim to own, Confluence Rivers goes through the process of obtaining titles, which includes going through the real property records, and surveys to determine where the assets really lay.⁷¹

Past Commission Treatment of Acquisition Costs

⁶⁵ Ex. 221, DR 66 work papers.

⁶⁶ Tr. 9.5, p. 44.

⁶⁷ Tr. Vol. 9.5, pp. 64-66.

⁶⁸ Tr. Vol. 9.5, p. 28.

⁶⁹ Tr. Vol. 9.5, pp. 29.

⁷⁰ Tr. Vol. 9.5, p. 29.

⁷¹ Tr. Vol. 9.5, p. 42.

55. As a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for accumulated depreciation, should be included in the utility's rate base.⁷² This protects against unreasonable returns by not providing rate base treatment on investments that are above net depreciated original costs at the time of purchase. This concept is the net original cost rule.⁷³ The net original cost rule was developed in order to protect ratepayers from having to pay higher rates simply because ownership of utility plant has changed, without any actual change in the usefulness of the plant. Generally, costs which do not benefit the ratepayer are considered costs of ownership and are not recoverable from customers.⁷⁴

56. Staff based its recommendation on the Commission's past treatment of acquisition costs in two cases, citing the Great Plains Energy Incorporated, Kansas City Power & Light Company and Aquila, Inc. merger File No. EM-2007-0374, which discussed transition and transaction costs.⁷⁵

57. The second cited prior decision was File No. EM-2000-292, which discussed transition and transaction costs involved two large, regulated, electric utilities, Saint Joseph Light & Power and UtiliCorp United, Inc.⁷⁶

58. Transaction costs are costs incurred by the purchaser and seller to effectuate the financial, legal, and regulatory requirements of the merger. These costs are incurred prior to and immediately after a merger or acquisition.⁷⁷

⁷² Ex. 129, Majors Surrebuttal, p. 7, citing File No. EM-2000-292, Second Report and Order, *In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority to Merge St. Joseph Light & Power Company with and into UtiliCorp United Inc., and, in Connection Therewith, Certain Other Related Transactions*, 12 Mo.P.S.C.3d 388, 389-90 (2004), effective March 7, 2004.

⁷³ Ex. 129, Majors Surrebuttal, p. 6.

⁷⁴ Ex. 129, Majors Surrebuttal, p. 6, citing to the Report and Order in Case No. EM-2007-0374.

⁷⁵ Tr. Vol. 9.5, p. 90 and p. 75.

⁷⁶ Tr. Vol. 9.5, p. 75.

⁷⁷ Ex. 110, Majors Direct, p. 14.

59. Transition costs are costs incurred to combine the entities participating in the acquisition to combine the operations and are incurred as the operations of the merged or acquired entities are combined.⁷⁸ These transition costs may later be amortized and recovered through rates.⁷⁹

60. Synergy savings are reductions in costs from combining the operations of merging utilities as compared to the combined costs of the entities standing alone. Examples of synergy savings include benefits of scale, improved efficiency in support functions, economies of scale in purchasing, and savings from combining customer service and field operations in the same geographic area.⁸⁰

61. Staff's witness indicated that Confluence Rivers' purchase of small utility systems does not create the traditional synergies that might offset acquisition costs.⁸¹

62. Regarding prior Confluence Rivers' cases, some deferred maintenance costs for leak repairs, line location, smoke testing, and sludge removal for the Indian Hills, Elm Hills, and Raccoon Creek systems have been deferred and amortized. While Confluence Rivers considers those costs to be similar to the acquisition costs in the current case, the treatment of those costs in the prior rate cases were specifically agreed to in disposition agreements.⁸²

63. A disposition of a small utility company revenue increase request does not support any specific party's positions. There were no agreements between the parties when prior Confluence Rivers' rate cases were settled that specified, if or which acquisition costs would or would not be included in rate base.⁸³

⁷⁸ Ex. 110, Majors Direct, p. 14.

⁷⁹ Tr. Vol. 9.5, p. 71.

⁸⁰ Ex. 129, Majors Surrebuttal, pp. 4-5.

⁸¹ Tr. Vol. 9.5, pp. 85-86.

⁸² Ex. 129, Majors Surrebuttal, p. 8.

⁸³ Tr. Vol. 9.5, pp. 61-62.

64. Confluence Rivers argued that the acquisition costs identified as engineering and legal are indirect capital costs, and the NARUC USoA instructs the capitalization of the indirect costs with the transmission or collection systems that are the more direct costs, such as actual pipe in the ground.⁸⁴

65. Acquisition costs posted to transmission and collection plant accounts would have a return or profit on the dollars if included in the revenue requirement even though no additional pipe was installed.⁸⁵

66. Confluence Rivers argued that workpapers in the Company's prior Staff-assisted rate cases (File Nos. WR-2020-0053 and WR-2020-0275) show that some acquisition costs have previously been allowed and included with rate base. The Company also argued there were no disallowances of acquisition costs in other rate cases filed by predecessor companies Hillcrest (WR-2016-0064 and SR-2016-0065), Raccoon Creek (SR-2016-0202) and Indian Hills (WR-2017-0259).⁸⁶

67. Staff acknowledged that it has included some acquisition costs as rate base in prior Confluence Rivers-related Staff-assisted rate cases.⁸⁷

68. Treating the engineering and legal costs as plant items would capitalize the cost to a specific asset, some of which can have a fifty-year life span.⁸⁸

Engineering Costs-Admin, GIS, and Survey

69. Confluence Rivers testified it has a low percentage of transaction costs as all of work prior to a contract being signed is done in-house.⁸⁹

⁸⁴ Tr. Vol. 9.5, p. 19.

⁸⁵ Tr. Vol. 9.5, p. 22.

⁸⁶ Ex. 18, Thies Rebuttal, p. 12.

⁸⁷ Tr. Vol. 9.5, p. 70, and p. 74.

⁸⁸ Tr. Vol. 9.5, p. 71.

⁸⁹ Tr. Vol. 9.5, p. 39.

70. After the contract is signed, Confluence Rivers begins to incur engineering and legal costs to be ready for closing, which includes: mapping of the system (GIS); determining all of the assets; and verifying legal ownership and access of all of the assets.⁹⁰

71. Some of the preliminary expenditures of Confluence Rivers were intended to determine the extent and scope of the condition of the systems and the needed repairs.⁹¹

72. Flinn Engineering was one of the vendors providing services categorized by Confluence Rivers under Engineering – Admin as part of the acquisition costs.⁹² The purpose of the Flinn Engineering report was listed as valuation.⁹³

73. Feasibility studies to evaluate potential projects related to the evaluation of a potential acquisition are not eligible for capitalization.⁹⁴

74. For Confluence Rivers, if the seller does not own all the assets it claims to own; the transaction is put on hold as Confluence Rivers goes through the process of getting title, which includes going through real estate records, performing surveys and determining where the assets really exists.⁹⁵ Confluence Rivers needs asset location data for Missouri One Call.⁹⁶

75. Any costs to secure clean title to the property are costs of ownership.⁹⁷

⁹⁰ Tr. Vol. 9.5, pp. 9, and 41.

⁹¹ Ex. 18, Thies Rebuttal, pp. 11-12.

⁹² Ex. 221, DR 66 work papers, p. 2.

⁹³ Ex. 23, DR 66, p. 103

⁹⁴ Ex. 129, Majors Surrebuttal, p. 5.

⁹⁵ Tr. Vol. 9.5, p. 42.

⁹⁶ Tr. Vol. 9.5, pp. 27-28.

⁹⁷ Ex. 129, Majors Surrebuttal, p. 5.

76. Staff acknowledged that the GIS costs have merit to be recovered, but recommended recovery as amortized expenses.⁹⁸ Staff cited its belief that certain of the acquisition costs were incurred for the betterment of the entire system and for customers.⁹⁹

77. Other expenditures included costs to determine proper title and sufficient easement and right of way access to properties or to obtain Commission approval of the transaction.¹⁰⁰

Legal Costs-Real Estate, and Regulatory

78. The Legal-Real Estate costs, according to Staff's witness, are to some extent costs to acquire title and to establish right-of-way easements when property is transferred. Confluence Rivers indicated that the Legal-Real Estate costs are also required to establish who owns the property and where the assets actually are.¹⁰¹

79. The Company's costs to pay a lawyer to draft the contract for an acquisition are not included in the costs identified as acquisition costs in this rate case.¹⁰²

80. There are utility systems acquired by the Company where previous owners did not have easements or otherwise did not have legal access to the utility systems' assets. Generally, Confluence Rivers would resolve these issues before closing on the purchase of the utility system.¹⁰³

⁹⁸ Tr. Vol. 9.5, p. 93.

⁹⁹ Tr. Vol. 9.5, p. 92.

¹⁰⁰ Ex. 18, Thies Rebuttal, pp. 11-12.

¹⁰¹ Tr. Vol. 9.5, pp. 68-69.

¹⁰² Tr. Vol. 9.5, p. 21.

¹⁰³ Tr. Vol. 9.5, p. 29.

81. There is a benefit to the utility system and its customers in the future for establishing clear title to the utility system assets and obtaining easements for access to the utility system assets.¹⁰⁴

82. Acquisition cost vendors identified as Legal-Regulatory include Brydon, Swearngen & England, P.C., ScottMadden, Inc., and Nitor Billing Services, LLC.¹⁰⁵

83. Confluence Rivers' witness D'Ascendis is a partner at ScottMadden, Inc.¹⁰⁶

84. Confluence Rivers' application in this case and representation in part has been provided by Dean L. Cooper, of Brydon, Swearngen & England, P.C.¹⁰⁷

85. Nitor Billing Services, LLC has previously provided customer billing services, and currently provides call center services for Confluence Rivers.¹⁰⁸

86. Confluence Rivers has not provided any evidence to support Nitor Billing Services, LLC's role in the acquisition activities prior to closing.¹⁰⁹

87. Confluence Rivers' response to Staff data request (DR) 66 included documents that identify a number of real estate related costs beyond the purchase price of utility systems. Acquisition costs described by Confluence Rivers as Legal-Real Estate in its general ledger postings include a number of vendors that do not appear in the documents provided in Exhibit No. 23, DR 66. In addition, potential vendors identified in Exhibit No. 23 documents are not included in the general ledger postings identified as acquisition costs.¹¹⁰

¹⁰⁴ Tr. Vol. 9.5, pp. 73-74.

¹⁰⁵ Exs. 23 and 221.

¹⁰⁶ Ex. 7, D'Ascendis Direct, p. 1.

¹⁰⁷ Tr. 9.5, p. 2 and EFIS Item No. 2, Transmittal Letter.

¹⁰⁸ Ex. 103, Dhority Direct, pp. 3-4.

¹⁰⁹ Ex. 23, DR 66; and Ex. 18, Thies Rebuttal, p. 10.

¹¹⁰ Ex. 23, DR 66; and Ex. 221, DR 66 work papers.

88. Specifically, Confluence Rivers is asking that the acquisition costs it has included in various plant accounts earn a return of depreciation expense from anywhere from a 20- to 50-year life span and a return on depreciation expense through the rate base rate of return calculation.¹¹¹

89. Staff recommended a five-year amortization of some of the acquisition costs as an alternative to Confluence Rivers proposed treatment. Staff also recommended that the amortized costs not receive rate base treatment.¹¹²

Uncategorized Costs

90. There was \$8,207 in acquisition costs for which no description was provided. That \$8,207 was merely identified as “Transfer In” with no explanation. No evidence was presented to explain what the uncategorized costs covered.¹¹³

Conclusions of Law Regarding Acquisition Costs

P. Section 393.170, RSMo (Supp. 2022), states, pertinent part:

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted ... without first having obtained the permission and approval of the commission. ...

3. The commission shall have the power to ... determine that such ... exercise of the ... franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. ...

Issue Presented by the Parties

What legal and preliminary engineering costs related to acquisitions and applications for certificates of convenience and necessity should be capitalized?

¹¹¹ Tr. Vol. 9.5, p. 91.

¹¹² Tr. Vol. 9.5, p. 92.

¹¹³ Ex. 23, DR 66; and Ex. 221, DR 66 work papers.

Decision Regarding Acquisition Costs

The only two cases cited by the parties in which the Commission discussed that acquisition costs be designated as transition or transaction costs involved large electric utility corporate entities. The merger of large utility systems also typically create merger synergies or savings that offset transaction and transition costs, which are recovered before the next rate case where operating costs are then determined on a post-merger basis. While the analysis and treatment of transition and transaction costs was useful in those cases and in those circumstances, the Commission finds the analysis of transaction costs identified in this Confluence Rivers rate case and the circumstances to be different enough that it will allow recovery of some of the acquisition costs. No evidence was presented to support Confluence Rivers realizing any merger savings to offset the acquisition costs identified.

However, the Commission will rely on the underlying premise that founded the distinction of transaction versus transition costs – the net original cost rule. The rule states “Generally, transaction costs which do not benefit the ratepayer and are only costs of ownership are not recoverable from customers.” Transition costs that facilitate the combination of multiple utility systems in the absence of offsetting synergy opportunities typically benefit customers and would therefore be recoverable through rates. The Commission agrees with Staff that none of the identified acquisition costs in this case are transition costs.

However, the condition of distressed water and sewer utility systems requires consideration of original cost in a somewhat different context emphasizing whether the added costs after the utility property was first devoted to public use create any actual change in the usefulness of the plant. Confluence has demonstrated that at least some

distressed water and sewer utility systems are in such condition that the original costs as identified by the original owner's records are inadequate to support viable utility systems. Immediate improvements to bring distressed water and sewer utility systems into DNR compliance and to provide safe and adequate service to customers should be recoverable to some extent. The original costs provide the basis for a return of the original cost through depreciation and the return on the utility system investment through earnings. The Commission's treatment in this rate case will not treat the identified acquisition costs as original plant investment. Providing recovery through an amortization of some of the identified acquisition costs will allow recovery of the identified transaction costs but will not allow a return on the identified acquisition costs. The Commission will allow a specific subset of costs to be capitalized.

The Commission recognizes that there is an approximate difference of \$250,000 between the two acquisition cost amounts presented by Confluence Rivers and Staff (\$1,218,969 from witness Thies' Rebuttal and \$987,852 from DR 66 as aggregated by Staff in Ex. 221). The Commission considered each category of acquisition costs as described and quantified by Staff and presented into evidence as Exhibit No. 221.

Engineering Costs-Admin

Confluence Rivers' witness testified that the engineering feasibility work occurred after a contract is signed and prior to closing. That testimony is controverted by the information contained in Exhibit No. 23, which is DR 66, which indicated that Flinn Engineering was performing valuation services, which the Commission would expect would occur prior to contract signature and would also be a transaction cost, as defined by Staff. There is no evidence to verify the services provided by the other vendors in this

category. Therefore, the Commission rejects recovery of the Engineering-Admin acquisition costs of \$208,525.

Engineering Costs-GIS

The Commission finds that the costs included in the category of Engineering-GIS fall within the applicability of the net original cost rule because the addition of the GIS mapping of the water and sewer utility systems does change the usefulness of the plant assets for both the utility systems and customers going forward. If these systems transfer ownership in the future, none of the geo-locating should need to be repeated. Staff agreed at hearing that there would be merit in allowing recovery of these costs because of future benefits to customers. The Commission disagrees with Staff's opinion that the GIS costs should be amortized and instead will authorize that the Engineering-GIS costs in the amount of \$59,828 be capitalized to earn both a return on and of the costs in rates.

Engineering Costs-Surveys

The Company testified that surveys are used to address title issues as well as prepare for taking over operations. Due to the lack of detailed information submitted by Confluence Rivers, it was not possible for the Commission to delineate surveying services relative to resolving title issues and engineering services to prepare for taking over the operation of the system. Therefore, due to the lack of evidence to indicate the breakdown of surveying, the items contained in the category Engineering-Survey in the amount of \$1,195 and \$165,158 are not authorized for recovery.

Legal Costs-Regulatory and Real Estate

Evidence supports the costs to acquire the Certificate of Convenience and Necessity (CCN) for each Confluence Rivers utility system included in the acquisition costs identified by Staff. Staff agreed at hearing that similar costs for a rate case

proceeding would be recoverable. The Commission will allow recovery of these Legal-Regulatory costs in the amount of \$113,244 (\$114,272 - \$1,028) through a five-year amortization.

The legal costs authorized do not include any amount attributed to Nitor Billing Services (\$1,028), as there is no evidence to support a finding that Nitor Billing Services provided (or can provide) legal services.

Evidence provided by Confluence Rivers supported that the Legal-Real Estate costs were incurred to gain clear title to utility system assets and invest in easements for access to utility system property for maintenance of the systems. The inadequate condition of the distressed water and sewer utility systems records required these costs be incurred which under normal conditions would generally be avoided. The legal-real estate costs amount of \$430,667 shall be amortized over 5-years.

Uncategorized Costs

The \$8,207 in recorded uncategorized acquisition costs lacks evidence to assess if it should be eligible to be included in recoverable acquisition costs. Therefore, the request to recover \$8,207 in uncategorized acquisition costs is rejected.

NARUC

Confluence Rivers argued that the NARUC USoA for water and sewer companies contemplates acquisition costs in its description of account 183 – Preliminary Survey and Investigation Charges. The Commission finds this to be incorrect. “The feasibility of projects under contemplation” is for costs of potential projects of a utility already owned and in operation. Confluence Rivers’ interpretation is for projects contemplated prior to ownership to assess what projects would need to be undertaken to bring a utility up to

safe and adequate service. In other words, the Company seeks to know how much of an investment beyond the purchase price is required.

Within the USoA, specific account descriptions and general instructions leave room for some interpretation. However, the evidence in this case related to acquisition costs identified by Staff as transaction costs do not support ultimately posting the costs to USoA 343- Water Transmission and Distribution Mains or to USoA 352.1 Collection Sewer-Force or 352.2 Collection Sewer-Gravity. The USoA description of account 183 requires that records be maintained that support a direct relationship between the preliminary cost and the plant project completed and placed into service. No evidence was provided in this case other than for Engineering-GIS related costs to demonstrate that the use of accounts 183, 343 and 352.1 and 352.2 were appropriate for the acquisition costs identified by Staff.

TIMESHEETS

Findings of Fact Regarding Timesheets

91. Confluence Rivers has previously agreed to keep detailed timesheets for all employees.¹¹⁴

92. A timesheet helps to insure a cost causation connection between the employees and the utility system that cause costs to be incurred.¹¹⁵

93. Confluence Rivers is a subsidiary of CSWR, LLC.¹¹⁶

¹¹⁴ Ex. 107, Sarver Direct, pp. 17-18.

¹¹⁵ Tr. Vol. 9.5, p. 143.

¹¹⁶ Ex. 17, Thies Direct, p. 2.

94. Confluence Rivers has no employees. General business services are provided by CSWR, LLC. Other services, such as accounting, meter reading for billing, and customer service functions, are provided by third party vendors.¹¹⁷

95. CSWR began maintaining timesheets in January 2021.¹¹⁸

96. Confluence Rivers testified it is 92% in compliance with the various orders of the Commission to keep timesheets. Only seven employees have not consistently kept timesheets.¹¹⁹

97. Confluence Rivers admitted it did not fully comply with its agreements in regards to the timesheets of certain executives, which the Company suggested was a result of the tremendous growth experienced at CSWR since the time of that commitment.¹²⁰

98. Confluence Rivers' business model included an effort to achieve economies of scale across the entire CSWR national footprint.¹²¹

99. Confluence Rivers' corporate growth has been rapid, entering six additional states and adding 157 acquisitions (approximately 95,000 connections) since December 31, 2020.¹²²

100. Over the past five years, the amount of CSWR corporate overheads allocated to Missouri have decreased as a result of the CSWR's growth.¹²³

¹¹⁷ Ex. 107, Sarver Direct, pp. 2-3.

¹¹⁸ Ex. 107, Sarver Direct, pp. 18-19.

¹¹⁹ Tr. Vol. 9.5, p. 131.

¹²⁰ Ex. 5, Cox Rebuttal, p. 32.

¹²¹ Ex. 5, Cox Rebuttal, p. 32.

¹²² Ex. 5, Cox Rebuttal, p. 32.

¹²³ Ex. 5, Cox Rebuttal, pp. 32-33.

101. Confluence Rivers has requested that the need to maintain timesheets be suspended. As an alternative, the Company requested that director-level staff and above would engage in exception time reporting.¹²⁴

102. Exception time reporting is where employees only report their time worked if it varies from a standard, pre-determined value.¹²⁵ Under exception time reporting, executive staff's (including director level employees') time would be recorded only when it goes above a standard time allocation.¹²⁶

103. Confluence Rivers' executive staff includes fourteen positions: the President, Vice President, Senior Vice President, Chief Financial Officer, Vice President/Corporate Controller, Chief of Staff, Director of Financial Planning and Analysis, Director of Engineering, Director of Asset Management, Director of Customer Experience, Director of Human Resources, Director of Regulatory Operations, General Counsel and Associate General Counsel.¹²⁷

104. Confluence Rivers also proposed a Project Time-Tracking plan in which its executive staff tracks their time spent on the special projects on a monthly basis.¹²⁸

105. There are certain exceptions and special projects that executive staff could allocate time to on a monthly basis. These projects might include annual audits, the rate cases of individual entities, large construction projects, certain company initiatives including software implementations or vendor selection processes and similar activities.¹²⁹

¹²⁴ Ex. 5, Cox Rebuttal, pp. 35-36.

¹²⁵ Ex. 131, Sarver Surrebuttal, p. 9.

¹²⁶ Tr. Vol. 9.5, p. 137.

¹²⁷ Ex. 131, Sarver Surrebuttal, p. 9.

¹²⁸ Ex. 18, Thies Rebuttal, p. 19.

¹²⁹ Ex. 18, Thies Rebuttal, pp.19-20.

106. Confluence Rivers proposes that any time remaining after the project allocations would be allocated using the three-factor methodology that the Company uses for its other overhead allocation costs.¹³⁰

107. The corporate allocation factor is 7.97%.¹³¹

108. On a daily basis, CSWR's executive staff addresses dozens of issues arising in each of the twelve states in which CSWR is operating a utility system. Confluence Rivers' witness testified that it is extremely time-consuming to keep timesheets.¹³²

109. The executive staff employees of CSWR are involved in setting procedures, monitoring operations performance, holding departmental meetings, supervising employees and contractors, and setting strategic direction for the Company. A significant portion of that activity impacts all customers of CSWR's subsidiaries and not just one system or entity.¹³³

110. Confluence Rivers argued that executive staff time spent typically affects all subsidiaries, and all customers; thus, it is a cost that should be allocated.¹³⁴

111. Confluence Rivers' system acquisitions are happening so rapidly that timesheet allocations are likely to differ not only year-to-year but quarter-to-quarter. Timesheet entries covering past periods are unlikely to be accurate predictors of how each employee's time should currently be allocated or will be in the future.¹³⁵

¹³⁰ Ex. 18, Thies Rebuttal, pp. 19-20.

¹³¹ Ex. 107, Sarver Direct, p. 5; Tr. Vol. 10, p. 183; and Joint Response Regarding Settled Issue, filed September 15, 2023 (filed jointly by all Parties).

¹³² Ex. 5, Cox Rebuttal, pp. 35-36.

¹³³ Ex. 18, Thies Rebuttal, p. 19.

¹³⁴ Ex. 18, Thies Rebuttal, p. 19.

¹³⁵ Ex. 5, Cox Rebuttal, pp. 31-32.

112. Missouri is the only state that requires CSWR to keep timesheets.¹³⁶

113. Less than 8% of the workload of the CSWR staff during the test year in this rate case was allocated to Missouri.¹³⁷

Conclusions of Law Regarding Timesheets

No additional Conclusions of Law were necessary for this issue.

Issue Presented by the Parties

Should the Commission order Confluence to require its employees, including executives, to keep timesheets that show the activities performed and where they were performed?

Decision Regarding Timesheets

Both Staff and OPC spent time addressing the prior promises of Confluence Rivers to keep timesheets for all employees. Confluence Rivers admitted it did not fully comply with its agreements in regards to the timesheets of certain executives. However, the only question before the Commission regards ordering timesheets on a going forward basis for employees of CSWR for work performed on behalf of Confluence Rivers, including executives.

The Company argued it should not be ordered to keep timesheets for its executive staff due to the high amount of work involved, the singularity of Missouri's requirement as compared to other states Confluence Rivers has systems in, and the low percentage of Missouri-related work that the employees of CSWR engage in, as Confluence Rivers has no employees of its own. Staff and OPC argue that the timesheets help establish the cost causation connection between the work being done and which utility system. The Commission agrees with both, that timesheets for executives should not be ordered, and

¹³⁶ Tr. Vol. 9.5, p. 129, p. 131, and p. 134.

¹³⁷ Tr. Vol. 9.5, p. 135.

that establishing cost causation is necessary. The Commission will order that non-executive staff of CSWR continue to keep timesheets. Those timesheets will help establish cost causation.

Confluence Rivers proposed an alternative to timesheets for its executive staff, including directors, Project Time-Tracking. Under the Project Time-Tracking system the non-timesheet keeping staff would record time spent on special projects on a monthly basis. The Commission is not requiring the use of Project Time-Tracking but finds that this additional information collection would likely help alleviate problems Staff raised in determining how to allocate executive staff time to Missouri during future rate case audits. Documentation of appropriate costs for inclusion in a utility's revenue requirement make it easier for the determination of just and reasonable rates.

Regarding executive and director staff, Confluence Rivers is already using a corporate allocation methodology for other items that are shared between utility systems. Parties to Confluence Rivers' rate cases, including Staff, are able to audit allocation factors and determine whether the allocation methodology being applied to shared costs are appropriate. Likewise, using an allocation for executive and director staff time will not preclude the audit of the allocation factors. Applying the corporate allocation factor to executive and director staff time will provide the same cost causation connection as set in this rate case for other shared corporate cost items. The Commission will order the use of the 7.97% corporate allocation factor to also allocate executive and director staff time.

COST OF CAPITAL

Findings of Fact Regarding Cost of Capital

Capital Structure

114. Capital structure represents how a company finances its assets. The typical capital structure consists of common equity, long-term debt, and short-term debt.¹³⁸

115. Generally, the cost of equity will be higher than the cost of debt. It then follows that a capital structure with a higher percentage of equity will result in higher costs to consumers.¹³⁹

116. Confluence Rivers recommended the Commission approve its actual capital structure of 68.56% common equity and 31.44% long-term debt.¹⁴⁰

117. Staff calculated Confluence Rivers' actual equity at 16.19% as of year-end 2022.¹⁴¹

118. OPC calculated Confluence Rivers' actual equity at 16.49% as of year-end 2022.¹⁴²

119. Staff recommended a hypothetical capital structure of 50% common equity and 50% debt due to: Confluence Rivers' proposed equity ratio of 68.56% exceeding Staff's calculation of 16.19% actual equity; the equity ratios of the proxy group; authorized equity ratios of other regulated utilities throughout the country over the last several years; Confluence Rivers' large negative retained earnings balance of approximately \$9.5 million

¹³⁸ Ex. 209, Murray Direct, p. 4.

¹³⁹ Tr. Vol. 10, pp. 154-155.

¹⁴⁰ Ex. 7, D'Ascendis Direct, p. 15.

¹⁴¹ Ex. 109, Walters Direct, p. 23.

¹⁴² Ex. 209C, Murray Direct, p. 5. Although marked as confidential in OPC's testimony, the Commission notes that Staff's calculation was not confidential, and thus will publish this number for comparison.

at year-end 2022; its unique corporate structure, which relies directly on affiliates for external capital structure; and Confluence Rivers' size.¹⁴³

120. OPC recommended a capital structure of 45% common equity and 55% long-term debt.¹⁴⁴ OPC argued that the 55% debt is the maximum amount of debt that Confluence Rivers' lender would authorize.¹⁴⁵

121. Authorized common equity ratios for regulated utilities have generally been in the range of 48.0% to 52.0% over the last several years.¹⁴⁶

122. The Company testified that generally companies only take capital when it is needed, so as to not be overcapitalized.¹⁴⁷

123. Prior to the issuance of debt in December 2022, Confluence Rivers operated with no third-party debt.¹⁴⁸

124. Confluence Rivers borrowed an amount not to exceed \$7.2 million in long-term debt from CoBank, ACB (CoBank).¹⁴⁹

125. Because CoBank's estimate of Confluence's net worth (*i.e.* equity) balance excluded affiliate liabilities (referred to as Holding Company Debt in the definition), CoBank views Confluence Rivers' affiliate payables as equity. This would show Confluence Rivers' equity balance to be approximately 73%.¹⁵⁰ Staff testified that it was

¹⁴³ Ex. 214, Walters Direct, p. 25.

¹⁴⁴ Ex. 209, Murray Direct, p. 4 and p. 7.

¹⁴⁵ Ex. 209, Murray Direct, p. 4.

¹⁴⁶ Ex. 109, Walters Direct, p. 24.

¹⁴⁷ Tr. Vol. 10, pp. 34-35.

¹⁴⁸ Tr. Vol. 10, p. 112.

¹⁴⁹ File No. WF-2023-0023, Order Correcting Order Granting Financing Application, issued December 19, 2022.

¹⁵⁰ Ex. 209, Murray Direct, p. 6.

unaware of any utility that capitalizes itself at the 80 to 73 percent level, at least on a ratemaking basis.¹⁵¹

126. Confluence Rivers' Utility Proxy Group (Utility Proxy Group) is a proxy group of six water companies used by the Company in its calculations.¹⁵²

127. The Utility Proxy Group had an average common equity ratio of 51.78%¹⁵³.

128. Staff's proxy group contained 13 companies and included gas utilities. Its average common equity was 46.4% and median common equity was 44.7%.¹⁵⁴

129. OPC used the Company's Utility Proxy Group.¹⁵⁵

130. A Confluence Rivers affiliate in Kentucky, Bluegrass Water Utility Operating Company, proposed and was awarded a hypothetical 50/50 capital structure by the Kentucky Public Service Commission.¹⁵⁶

131. A Confluence Rivers affiliate in Louisiana, Magnolia Utility Operating Company, settled on a hypothetical 60% equity and 40% debt capital structure for two years with an imputed equity cap of 50% for the third year.¹⁵⁷

132. Generally, business loan covenants are put in place to protect lenders from the risk of the borrower defaulting, not to encourage the borrower to borrow the maximum amount it can.¹⁵⁸

133. Maintaining a maximum debt ratio would likely be imprudent management of the Company's capital structure, especially given its history of net operating losses.¹⁵⁹

¹⁵¹ Tr. Vol. 10 in camera, p. 107.

¹⁵² Ex. 7, D'Ascendis Direct, p. 4.

¹⁵³ Ex. 7, D'Ascendis Direct, pp. 14-15.

¹⁵⁴ Ex. 109, Walters Direct, p. 23, and p. 26.

¹⁵⁵ Ex. 209, Murray Direct, p. 36.

¹⁵⁶ Ex. 109, Walters Direct, p. 24.

¹⁵⁷ Ex. 109, Walters Direct, pp. 24-25.

¹⁵⁸ Ex. 8, D'Ascendis Rebuttal, p. 47.

¹⁵⁹ Ex. 8, D'Ascendis Rebuttal, pp. 47-48.

Conclusions of Law regarding Cost of Capital and Capital Structure

T. In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure. Determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.¹⁶⁰

U. An accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so. The Court cited two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.¹⁶¹

Issues Presented by the Parties:

- a. What is the appropriate capital structure to use in calculating the Company's rate of return?*

Decision on Capital Structure

Utility service companies are given a monopoly for a service area, and certain items are regulated under the Commission's jurisdiction, pertinent here – customer rates. The capital structure of a business is a factual statement of how it is financed; i.e. the amount of equity and the amount of debt at a given time. Capital structure is used in the calculation of the rate of return, which is applied to rate base and included in customer rates.

¹⁶⁰ *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 573 (Mo. Ct. App. 2009).

¹⁶¹ *State ex. Rel. Associated Nat. Gas Co. v. Pub. Serv. Comm'n of Missouri*, 706 S.W.2d 870, 878 (Mo. App., W.D. 1985) internal citations omitted.

Typically, the cost of debt is lower than the cost of equity (ownership), thus there is an incentive for a regulated utility to have a capital structure with a high amount of equity in order to maximize the rate of return formula. In order to protect consumers from utility companies that would try to manipulate its capital structure to take advantage of the higher cost of equity (thus higher return and higher customer rates), the Commission uses, when appropriate, a regulatory or hypothetical capital structure.

In the present case there is no agreement on the capital structure. The Company claimed its actual capital structure is 68.56% common equity with 31.44% long-term debt, and recommended using that capital structure in ratemaking. The Commission finds that the Company's actual debt-equity ratio is inefficient and unreasonable because it contains too much equity and not enough debt.

OPC claimed the actual equity component in the Company's actual capital structure is 16.49%, but recommended a capital structure of 45% equity and 55% long-term debt based on the CoBank loan covenant. Prior to December 2022, Confluence Rivers operated with no third-party debt. The Commission finds that OPC's proposed hypothetical capital structure based on the CoBank loan covenant would likely be imprudent as an actual capital structure. For this reason, the Commission does not find OPC's proposed capital structure to be a reasonable option.

Staff recommended a hypothetical capital structure of 50% common equity and 50% debt due to Confluence Rivers' proposed equity ratio of 68.56% exceeding its own actual equity ratio, the equity ratios of the proxy group, other Commission-authorized capital structures approved throughout the country over the last several years, Confluence's large negative retained earnings balance of approximately \$9.5 million at

year-end 2022, its unique corporate structure, which relies directly on affiliates for external capital structure and Confluence's size.

The Commission finds that Staff's proposed hypothetical capital structure of 50% equity and 50% debt is appropriate in this case. Ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. And each side of the ratemaking calculation, rate payers and shareholders, are protected from the other having a greater share. The Commission finds that a 50/50 capital structure in this case will produce just and reasonable rates.

Cost of Debt

134. Confluence Rivers recommended that the cost of debt be 6.60%, which reflects the cost of debt resulting from a debt issuance approved by the Commission in December 2022.¹⁶² Staff also recommended that the Commission approve Confluence Rivers recommended cost of debt of 6.60%¹⁶³

135. OPC recommended that the appropriate cost of debt to use in calculating Confluence Rivers' rate of return is 6.23%, due to administrative costs and patronage credit that lowers Confluence's effective cost of debt from the actual cost of debt.

136. A patronage credit is a confidential number of basis points, which could be applied each year, but is not guaranteed.¹⁶⁴

¹⁶² Ex. 7, D'Ascendis Direct, pp. 2-3.

¹⁶³ Ex. 109, Walters Direct, p. 4.

¹⁶⁴ Ex. 209C, Murray Direct, p. 19. The confidential number will not be stated in this order.

137. If the patronage credit is included in the cost of debt and the Company subsequently does not receive a patronage credit, the Company would not be recovering its full cost of debt in its rates for that period of time when no patronage credit was given.¹⁶⁵

138. OPC requested that if the patronage amount is not included in the cost of debt, that the amount be tracked on a cumulative basis, with carrying costs based on the 6.6% interest rate.¹⁶⁶

139. Confluence Rivers agreed that any patronage credits actually received by the Company on a going-forward basis would be recorded in a liability account for treatment in the next rate case.¹⁶⁷

Issues Presented by the Parties:

b. What is the appropriate cost of debt to use in calculating the Company's rate of return?

Decision on Cost of Debt

Regarding the cost of debt, the Commission finds that 6.60% is the appropriate regulatory cost of debt. It is the interest rate applied to Confluences Rivers' most recent debt issuance. OPC recommended 6.23% based on a presumption that a patronage credit discount would be given reducing Confluence Rivers cost of debt. However, the Commission finds that the CoBank loan was opened less than a year ago, which provides no history of a patronage credit discount being given or at what rate. Additionally, the patronage credit discount was not guaranteed to be given.

¹⁶⁵ Ex. 8, D'Ascendis Rebuttal, p. 49.

¹⁶⁶ Ex. 211, Murray Surrebuttal, p. 13.

¹⁶⁷ Tr. Vol. 10, p. 10.

Confluence has offered to track the patronage credit as a regulatory liability on a going-forward basis for consideration during Confluence Rivers' next rate case. The Commission finds this a just and reasonable resolution. The cost of debt shall be set at 6.60%, and Confluence Rivers shall track any patronage credits on a going forward basis and record those credits to a liability account for consideration in the next rate case.

Return on Equity

140. The authorized ROE is a regulatory ratemaking concept that quantifies the amount of net income allowed in the revenue requirement. The Cost of Equity (COE) is a market-based concept that quantifies an investors' required return on a common equity investment.¹⁶⁸

141. The COE must be estimated based on market data and various financial models. Because the COE is premised on opportunity costs, the models used to determine it are typically applied to a group of "comparable" or "proxy" companies.¹⁶⁹

142. Other than the loan Confluence recently closed with CoBank, there are no public market transactions to evaluate for purposes of estimating Confluence Rivers' COE.¹⁷⁰

143. Confluence Rivers recommended an ROE at 11.35%, which is the midpoint of its range of 10.85% to 11.85%.¹⁷¹

144. Staff recommended an ROE of 9.50%, the midpoint of a range of 9.20% to 9.80%.¹⁷²

¹⁶⁸ Ex. 209, Murray Direct, p. 20.

¹⁶⁹ Ex. 7, D'Ascendis Direct, p. 8; Ex. 109, Walters Direct, pp. 25-26.

¹⁷⁰ Ex. 209, Murray Direct, p. 4.

¹⁷¹ Ex. 7, D'Ascendis Direct, pp. 2-3, and 5.

¹⁷² Ex. 109, Walters Direct, p. 3.

145. OPC recommended an ROE at 9.65% that is within its recommended range of 9.25% to 9.90%.¹⁷³

146. The water utility rate case decisions across the United States from 2022 have an average rate award of 9.61%.¹⁷⁴ The median awarded ROEs for water utilities in 2022, nationally, was 9.75%.¹⁷⁵

147. Staff's witness testified he was unaware of any other utilities that exclusively acquire small, distressed systems.¹⁷⁶ OPC testified it is not aware of any other utility companies making the acquisition of distressed systems a primary business model.¹⁷⁷

148. Authorized ROEs for both electric and gas utilities have been below 10.0% for about the last nine years.¹⁷⁸

149. OPC testified that ROEs have generally been set in the 9% range.¹⁷⁹

Discounted Cash Flow Model

150. The Discounted Cash Flow (DCF) model posits that a stock price equals the sum of the present value of expected future cash flows discounted at the investor's required cost of capital.¹⁸⁰

151. The multi-stage DCF model reflects the possibility of non-constant growth for a company over time. The multi-stage DCF model reflects three growth periods: (1) a short-term growth period consisting of the first five years; (2) a transition period, consisting

¹⁷³ Tr. Vol. 10, p. 121.

¹⁷⁴ Tr. Vol. 10, p. 87; Ex. 226, S&P Global water rate case report 2022.

¹⁷⁵ Ex. 109, Walters Direct, p. 6.

¹⁷⁶ Tr. Vol. 10, p. 115.

¹⁷⁷ Tr. Vol. 10, p. 137.

¹⁷⁸ Ex. 109, Walters Direct, p. 4.

¹⁷⁹ Ex. 209, Murray Direct, p. 20.

¹⁸⁰ Ex. 109, Walters Direct, p. 28.

of the next five years; and (3) a long-term growth period starting in year 11 and extending into perpetuity.¹⁸¹

152. Confluence Rivers applied a single-stage constant growth DCF model to its Utility Proxy Group, and used analysts' five-year forecasts of earning per share growth. The Utility Proxy Group results in a wide range of indicated ROEs from 5.08% to 14.28%. The mean result, the median result, and the average of the mean and median results is 9.28%.¹⁸²

153. Mr. D'Ascendis biased his DCF results upward by removing only the low-end outlier when a DCF result of 14.28% was a high-end outlier.¹⁸³

154. In its DCF analysis, Staff performed the following: 1) a constant growth DCF model using consensus analysts' growth rate projections; 2) a constant growth DCF using sustainable growth rate estimates; and 3) a multi-stage growth DCF model.¹⁸⁴ Staff's opinion that a reasonable ROE based on its DCF results is 9.20%.¹⁸⁵

155. For its multi-stage growth DCF analysis, Staff applied an average long-term growth rate of 4.00%.¹⁸⁶ The long-term sustainable growth rate for a utility stock cannot exceed the growth rate of the economy in which it sells its goods and services in perpetuity. The long-term maximum sustainable growth rate for a utility investment is limited by the projected long-term gross domestic product (GDP) growth rate as that reflects the projected long-term growth rate of the economy as a whole. *Blue Chip*

¹⁸¹ Ex. 109, Walters Direct, p. 34.

¹⁸² Ex. 7, D'Ascendis Direct, pp. 22-24.

¹⁸³ Ex. 119, Walters Rebuttal, p. 10.

¹⁸⁴ Ex. 109 Walters Direct, p. 22.

¹⁸⁵ Ex. 109 Walters Direct. P. 38.

¹⁸⁶ Ex. 109, Walters Direct, p. 31.

Economic Indicators projected that over the next five and ten years, the U.S. nominal GDP will grow at an annual rate of approximately 4.00%.¹⁸⁷

156. The Company used a 6.00% growth rate in perpetuity in its DCF model.¹⁸⁸

Risk Premium Model

157. The Risk Premium Model can be expressed as bond yield plus.¹⁸⁹

158. The Company's recommendation relied on the results of the application of two risk premium methods to the Utility Proxy Group. The first method is the Predictive Risk Premium Model (PRPM), while the second method is a risk premium model using a total market approach.¹⁹⁰

159. The inputs to the PRPM are the historical returns on the common shares of each company in the Utility Proxy Group minus the historical monthly yield on long-term U.S. Treasury securities through October 2022.¹⁹¹

160. The average of the mean and median results of the Company's Utility Proxy Group applying PRPM calculated a cost of common equity rate of 12.20%.¹⁹²

161. Confluence Rivers calculated a common equity cost rate of 11.48% for its Utility Proxy Group based on the total market approach.

162. The Company averaged the results of the two methods, the PRPM (12.20%) and the adjusted market approach (11.48%), for an RPM-derived common equity cost rate of 11.84%.¹⁹³

¹⁸⁷ Ex. 109, Walters Direct, p. 31.

¹⁸⁸ Tr. Vol. 10, p. 127.

¹⁸⁹ Ex. 109, Walters Direct, p. 34.

¹⁹⁰ Ex. 7, D'Ascendis Direct, p. 26.

¹⁹¹ Ex. 7, D'Ascendis Direct, p. 27.

¹⁹² Ex. 7, D'Ascendis Direct, p. 28.

¹⁹³ Ex. 7, D'Ascendis Direct, p. 38.

163. Staff recommended a ROE of 9.80% based on its risk premium analysis.¹⁹⁴

164. The end-results of Confluence Rivers' risk premium assumptions are not consistent with reasonable capital market expectations.¹⁹⁵

165. The Company's use of projected bond yields causes an upward bias of approximately 25 basis points. Its exclusion of capital gains and losses on bond returns causes an upward bias of approximately 100 basis points in its calculation of historical risk premiums.¹⁹⁶

166. The Company's PRPM™-derived risk premium study adjusted result (i.e. after excluding two high-end outliers) of 12.28% is unreasonable when compared to the average authorized ROEs for electric, gas, and water utilities. The highest average authorized ROE of the three major regulated utility industries since 2006 is 10.52% for electric utilities in 2008. Further, natural gas utilities have not had an average authorized ROE of 12.28% or higher since 1991.¹⁹⁷

167. The Company's adjusted total market approach risk premium results of 11.48% are also unreasonable as natural gas utilities have not had an average authorized ROE of 11.48% or higher since 1998.¹⁹⁸

Capital Asset Pricing Model

168. In the Capital Asset Pricing Model (CAPM), the method of analysis is based upon the theory that the market-required ROR for a security is equal to the risk-free rate, plus a risk premium associated with the specific security.¹⁹⁹

¹⁹⁴ Ex. 109, Walters Direct, p. 43.

¹⁹⁵ Ex. 210, Murray Rebuttal, p. 10.

¹⁹⁶ Ex. 210, Murray Rebuttal, p. 20.

¹⁹⁷ Ex. Walters Rebuttal, p. 13.

¹⁹⁸ Ex. Walters Rebuttal, p. 13.

¹⁹⁹ Ex. 109, Walters Direct, p. 43.

169. The CAPM requires an estimate of the market risk-free rate, a company's beta,²⁰⁰ and the market risk premium.²⁰¹

170. The empirical CAPM (ECAPM) reflects the reality that while the results of these tests support the notion that beta is related to security returns, the empirical Security Market Line (SML) described by the CAPM formula is not as steeply sloped as the predicted SML.²⁰²

171. Confluence Rivers applied both the traditional CAPM and the ECAPM to its Utility Proxy Group and averaged the results.²⁰³

172. Confluence Rivers provided two methods of calculation of the beta: 1) the average beta of the Utility Proxy Group companies reported by Bloomberg Professional Services; and 2) the average beta of the Utility Proxy Group companies as reported by *Value Line*.²⁰⁴ The Company used a risk-free rate adopted for both applications of the CAPM of 3.96%.²⁰⁵ Confluence Rivers' calculation of the capital asset pricing model applied to the Utility Proxy Group resulted in an ROE of 12.00%.²⁰⁶

173. Staff calculated the CAPM using nine different methods, and recommended a CAPM return estimate of 9.40%.²⁰⁷ Staff's beta used the average and median Market Intelligence betas of 0.85 and 0.85, respectively.²⁰⁸ Staff used the projected 30-year

²⁰⁰ Beta measures the relative volatility of an investment. It is an indication of its relative risk. www.investopedia.com accessed October 19, 2023.

²⁰¹ Ex. 109, Walters Direct, p. 44.

²⁰² Ex. 7, D'Ascendis Direct, p. 39.

²⁰³ Ex. 7, D'Ascendis Direct, p. 41.

²⁰⁴ Ex. 7, D'Ascendis Direct, pp. 41-42.

²⁰⁵ Ex. 7, D'Ascendis Direct, p. 42.

²⁰⁶ Ex. 7, Schedule DWD-1, p.2.

²⁰⁷ Ex. 109, Walters Direct, pp. 51-52.

²⁰⁸ Ex. 109, Walters Direct, p. 44.

Treasury bond yield of 3.70% as provided by the *Blue Chip Financial Forecasts* for its CAPM analysis.

174. OPC performed a CAPM analysis that resulted in a range of 8.00% to 8.25% for the water utility industry.²⁰⁹ OPC used a market risk premium of 4.95%, 6.00% and 6.38% and a beta of 0.75.²¹⁰

175. The Company's reliance on an adjusted *Value Line* beta in its ECAPM study is inconsistent with the academic research supporting the development of the ECAPM.²¹¹

176. Confluence Rivers further increased the intercept and flattened the security market line by using projected long-term Treasury yields that are at odds with current market expectations and inconsistent with the Federal Reserve's projections and monetary policy.²¹²

Adjustments

177. Confluence Rivers' smaller size relative to the Utility Proxy Group indicates greater relative business risk for the Company because, all else being equal, size has a material bearing on risk.²¹³

178. Confluence Rivers requested a 1.00% upward ROE adjustment as a size premium.²¹⁴

179. Confluence Rivers recommended a 0.51% downward ROE adjustment based on the differences in financial risk between Confluence Rivers and the Utility Proxy Group.²¹⁵

²⁰⁹ Ex. 209, Murray Direct, p. 42.

²¹⁰ Ex. 209 Murray Direct, p. 41.

²¹¹ Ex. 119, Walters Rebuttal, p. 19.

²¹² Ex. 119, Walters Rebuttal, p. 20.

²¹³ Ex. 7, D'Ascendis Direct, p. 49.

²¹⁴ Ex. 7, D'Ascendis Direct, p. 52.

²¹⁵ Ex. 7, D'Ascendis Direct, p. 55.

180. The higher the level of risk, the higher the rate of return investors demand.²¹⁶

181. OPC recommended an upward adjustment to the ROE to recognize that the systems rely on bank financing rather than direct access to debt capital markets, in addition to some uncertainty related to future financial performance of the acquired systems.²¹⁷

182. Although qualifying its recommendation of 9.65% only if its own capital structure recommendation is used, OPC set its upper limit of its recommendation at 9.9% and not the full 1.00% zone of reasonableness up to 10.6%.

Zone of Reasonableness²¹⁸

183. OPC considered the Commission's "zone of reasonableness standard"²¹⁹ for purposes of setting an allowed ROE, with the starting point being a recent industry average allowed ROE.²²⁰

184. The average allowed ROE for water utilities for 2022 was 9.61% based on eight cases (range of 9.10% to 10.00% with a median of 9.65%).²²¹

185. OPC recommended the Commission use an allowed ROE of approximately 9.60% as the starting point for its zone of reasonableness standard. Subtracting 100 basis points from this average authorized ROE forms the basis for the low-end of the

²¹⁶ Ex. 7, D'Ascendis Direct, p. 9; Ex. 109, Walters, p. 39.

²¹⁷ Ex. 209, Murray Direct, p. 20.

²¹⁸ Ex. 209, Murray Direct, pp. 22-23.

²¹⁹ *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

²²⁰ Ex. 209, Murray Direct, p.21.

²²¹ Ex. 209, Murray Direct, p. 22.

Commission's zone of reasonableness of 8.6% with 10.6% representing the high-end of the Commission's zone of reasonableness.²²²

Conclusions of Law Regarding Return on Equity

V. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.²²³ "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this, commissions in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this most difficult function."²²⁴

W. The United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.²²⁵

X. In determining whether the rates proposed are just and reasonable, the Commission must balance the interests of the investor and the consumer.²²⁶ In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.²²⁷

²²² Ex. 209, Murray Direct, p. 22.

²²³ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

²²⁴ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976). In fact, for a court to find that the present rate results in confiscation of the company's private property that court would have to make a finding based on evidence that the present rate is outside of the zone of reasonableness, and that its effects would be such that the company would suffer financial disarray. *Id.*

²²⁵ *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). See, *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness'").

²²⁶ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

²²⁷ *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.²²⁸

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.²²⁹

Y. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.²³⁰

²²⁸ *Bluefield*, at 692-93.

²²⁹ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

²³⁰ *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

Z. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' ... Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.²³¹

Issues Presented by the Parties

- c. *What is the appropriate return on common equity to use in calculating the Company's rate of return?*

Decision on Return on Equity

The Commission must ensure the utility has sufficient opportunity to earn enough revenue to pay its debts and should be sufficient to assure confidence in the financial integrity of the utility, so as to maintain its credit and to attract capital. While the Commission is not bound to the use of any single formula or combination of formulae in determining rates, there are three that are commonly used and were used in this case by all three parties.

The Commission does not find the Company's calculation of ROE to be credible. The Company's use of high inputs and assumptions not consistent with industry standards led to high outputs.

Confluence Rivers is a for-profit company which has focused on expansion via acquisition of distressed water and sewer systems. The acquisition of distressed systems is not rare in itself, but it is certainly not the typical situation of one utility acquiring another.

²³¹ *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

Many of the systems Confluence Rivers acquired are distressed to the point of being in receivership and/or being requested to be purchased by the Commission or DNR.

The Commission will use the 2022 average of water utility rate award of 9.61 to establish its zone of reasonableness check, 8.61 to 10.61.

Confluence Rivers and OPC factored in adjustments to their ROE's to account for the increased risk of the Company compared to its proxy groups. Staff did not factor in a similar adjustment. The Commission finds that Confluence Rivers' recommended ROE of 11.35% (before an upward adjustment) is not reasonable as this is outside the established zone of reasonableness in this case and is 174 basis points higher than the average authorized ROE awarded in the nation in 2022. The Commission finds that Staff's recommended ROE of 9.50% is not reasonable as this does not account for Confluence Rivers' increased risk compared to its proxy group.

OPC recommended an ROE in the range of 9.25% to 9.90%, a 65 basis point range. OPC recommended a 65 basis point upward adjustment to its recommended ROE of 9.00% for an adjusted ROE of 9.65% to recognize that Confluence Rivers acquired systems relying on bank financing rather than direct access to debt capital markets, as well as some uncertainty related to future financial performance of the acquired systems. The Commission finds the high-end of OPC's range at 9.90% appropriately reflects the increased risk that Confluence Rivers faces from acquiring distressed water and sewer systems.

The Commission has concerns after listening to public comments about the impact of this rate increase on customers. The socialization of costs by combining rate districts in this case would have some customers pay more even though improvements to the utility systems they utilize have not been completed. The Commission also considers the

importance of safe drinking water to be a major concern for customers of distressed water utility systems.

The Commission finds an ROE of 9.90% will appropriately balance the interests of customers, allow the utility an opportunity to earn a fair and reasonable return, and provide safe and reliable service at just and reasonable rates.

ADVANCED METER INFRASTRUCTURE (AMI)

Findings of Fact Regarding AMI

186. Confluence Rivers has at least two systems, Indian Hills and Hillcrest, where it has installed an Automated Metering Infrastructure (AMI) meter attachment on its Badger Disc Series meters.²³²

187. The AMI meter attachment, which is an Orion Cellular Water Endpoint, enables Confluence Rivers' Badger meters to have interoperable capability to Internet of Things cellular infrastructure.²³³

188. AMI is a system of meters that provides for remote collection of water use data in real time.²³⁴

189. The AMI attachments at issue were installed by Confluence Rivers.²³⁵

190. Anticipated AMI benefits for customers are a greater level of accuracy and visibility into their utility accounts and usage, quicker identification of high-use events and leak detection, and a decrease in operational expense by eliminating manual meter reading.²³⁶

²³² Ex. 206, Marke Direct, p. 8.

²³³ Ex. 206, Marke Direct, p. 9.

²³⁴ www.epa.gov/watersense/advanced-metering-infrastructure, accessed September 14, 2023.

²³⁵ Tr. Vol 10, pp. 4-5. (Oral Joint Stipulation of Fact).

²³⁶ Ex. 206, Marke Direct, p. 9.

191. Confluence Rivers has not made the investment in an IT customer portal software to enable those customers to visualize 15-minute interval data of water usage.²³⁷ Additionally, Confluence Rivers' current customer bills do not possess the means to convey interval data.²³⁸

192. OPC recommended the amount of \$26,768 should be disallowed from recovery from ratepayers in relation to the AMI meter attachments.²³⁹

193. The \$26,768 cost disallowance represents three-quarters of the sum of the net plant for accounts 346 and 347 (which represent meters and meter installation respectively) multiplied by the OPC's recommended rate of return (as developed by OPC witness David Murray at 7.77%) plus the annual depreciation expense related to those same accounts for the Hillcrest and Indian Hills systems ("three-quarters cost disallowance").²⁴⁰

194. OPC recommended its three-quarters cost disallowance based on its research that the water meter utilized by Confluence Rivers would cost approximately \$75.00 compared to the AMI meter attachment, which costs an additional \$220.²⁴¹

195. OPC also recommended that the Commission order the Company to cease further deployment of AMI attachments.²⁴²

196. AMI can eliminate manual meter reading.²⁴³

²³⁷ Ex. 206, Marke Direct, pp. 9-10.

²³⁸ Ex. 206, Marke Direct, pp. 10-11.

²³⁹ Ex. 208, Marke Surrebuttal, pp. 13-14.

²⁴⁰ Ex. 208, Marke Surrebuttal, p. 14.

²⁴¹ Ex. 208, Marke Surrebuttal, p. 14.

²⁴² Ex. 206, Marke Direct, p. 12.

²⁴³ Ex. 206, Marke Direct, p. 9.

197. The annual salary for a Missouri-based water meter reader is \$35,236 with top earners making approximately \$65,000 and the low-end average by a city at \$32,214 for the City of Independence.²⁴⁴

198. OPC argued that the salary of a meter reader for more remote systems, such as those serviced by Confluence Rivers, would be lower than the low-end average by a city such as Independence.²⁴⁵

199. Confluence Rivers' annual third-party operations and maintenance (O&M) costs for its water and sewer system are roughly \$1,694,426.²⁴⁶

200. Confluence Rivers' recently issued Request for Proposals (RFP) related to third-party operating and maintenance costs resulted in an average 5.53% reduction in monthly O&M cost per system or close to \$93,701 in savings.^{247 248}

201. Indian Hills is located in Crawford County, Missouri.²⁴⁹ It is the only system Confluence Rivers operates in Crawford County.

202. Hillcrest is located in Cape Girardeau County, Missouri.²⁵⁰ It is the only system Confluence Rivers operates in Cape Girardeau County.

203. Confluence Rivers' O&M contractors are not only responsible for meter reading at water systems, but many other services, such as water sampling and testing, weekly inspections, maintenance, and monitoring alarms and remote controls.²⁵¹

²⁴⁴ Ex. 206, Marke Direct, p. 12.

²⁴⁵ Ex. 206, Marke Direct, p. 12.

²⁴⁶ Ex. 207, Marke Rebuttal, p. 9.

²⁴⁷ Ex. 20, Thomas Direct, p. 12.

²⁴⁸ $5.53\% \times \$1,694,426 = \$93,701$ in annual savings for all of the systems.

²⁴⁹ Ex. 225, Indian Hills Report and Order from WR-2017-0259, p.3

²⁵⁰ Ex. 134, Hillcrest Disposition Agreement from WR-2016-0064, p. 1.

²⁵¹ Ex. 20, Thomas Direct, Schedule TT-3, pp. 7-8.

204. Because the Company's systems are scattered across Missouri, travel time to and from the systems is a necessary consideration of any staffing analysis.²⁵²

Conclusions of Law

AA. In determining whether a utility's conduct was prudent, the Commission will judge that conduct by:

asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.²⁵³

BB. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

The PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.²⁵⁴

CC. It would be inconsistent with the statutory authority provided by Section 393.130.1, RSMo, for the Commission to make a decision on the recoverability of costs based upon a prudence analysis without reference to the detrimental impact of those practices to the ratepayers.²⁵⁵

DD. Subsection 393.150.2, RSMo, states that the utility bears the burden of proving that a requested rate is just and reasonable.

²⁵² Ex. 6, Cox Surrebuttal, p. 39.

²⁵³ *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

²⁵⁴ *Spire Missouri, Inc. v. Pub. Serv. Com'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).

²⁵⁵ *Associated Natural Gas* at 530.

EE. Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.²⁵⁶

Issue Presented by the Parties

Should the Commission disallow any costs related to AMI meter investments?

Decision Regarding AMI

The Commission has concerns with the analysis presented by OPC on this issue. Regardless that its customers cannot currently access 15-minute intervals for their water usage, there are significant benefits to Confluence Rivers and its customers to have access to the AMI meter technology – more accurate meter reading; leak detection; and reduced operation costs.

OPC's analysis fails to consider the unique geographical locations of the Confluence Rivers' water systems. The Indian Hills and Hillcrest systems are both the only system that Confluence Rivers operates in their respective counties. The location of these two systems relative to each other and other Confluence Rivers systems would likely indicate that operational savings would not only include a meter reader salary, which OPC acknowledged, but would also include additional operation cost saving and saving worker travel time between systems.

The Commission finds that OPC has not shown an inefficiency or improvidence that creates serious doubt as to the question of prudence in installing AMI attachments in

²⁵⁶ *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 376-379 (Mo. banc 2013).

Indian Hills and Hillcrest. The Commission further finds that OPC did not show a detrimental impact to customers.

THIRD-PARTY CONTRACT OPERATORS

Findings of Fact:

205. Confluence Rivers utilizes contract operators to run all of its treatment, distribution, and collection systems. Confluence Rivers does not employ water or sewer field operations staff in-house.²⁵⁷

206. The Company's use of third-party contractor operators has been in place for almost ten years, with no letters of violation from DNR.²⁵⁸

207. CSWR identifies qualified contractors via a written Request for Qualifications (RFQ).²⁵⁹

208. The Company then sends an RFP to the qualified contractors.²⁶⁰

209. For purposes of soliciting bids, Confluence Rivers will combine systems regionally as its systems are geographically dispersed.²⁶¹

210. There are approximately 31 persons employed via third-party contractor operators to service Confluence Rivers' Missouri systems.²⁶²

211. Current contractors provide service on a 24-hour, seven-days a week, and 365 days per year basis (24/7/365).²⁶³

²⁵⁷ Ex. 17, Thies Direct, p. 11, and Ex. 108, Gateley Direct, p. 6.

²⁵⁸ Tr. Vol. 11, p. 82.

²⁵⁹ Ex. 20, Thomas Direct, p. 6.

²⁶⁰ Ex. 20, Thomas Direct, p. 8.

²⁶¹ Ex. 20, Thomas Direct, p. 9.

²⁶² See OPC brief, p. 78 to back track and get cite.

²⁶³ Ex. 20, Thomas Direct, Schedule TT-3, pp. 5 – 8.

212. OPC alleged that Confluence Rivers' usage of third-party contractors was imprudent.²⁶⁴ However, OPC witness Marke acknowledged that the third-party contractor based model initially made a lot of sense to him when Confluence Rivers began operating.²⁶⁵

213. OPC proposed to divide Confluence Rivers' water and wastewater systems into nine regions.²⁶⁶

214. OPC recommended a disallowance of \$1,094,426 (of the \$1,694,426) with the remainder of \$600,000 going to hire, train, and equip nine in-house certified water and wastewater operator to replace the third-party contractors.²⁶⁷

215. In response to OPC's calculation of nine in-house operators, Confluence Rivers estimated that it would require approximately 22 employees to staff operations and maintenance with in-house personnel. The number of employees is due in part to: Occupational Safety and Health Administration (OSHA) regulations that require certain tasks be conducted by a team of operators; the nature and complexity of the Company's systems; the need for personnel to operate the system and personnel to repair the systems; and the geographically scattered nature of the Company's systems.²⁶⁸

216. A disallowance of recovery of the third-party contractor costs, if approved, would not void the contracts in place between Confluence Rivers and its third-party operators.²⁶⁹

²⁶⁴ Tr. Vol. 11, p. 128.

²⁶⁵ Tr. Vol. 11, p. 130.

²⁶⁶ Ex. 207, Marke Rebuttal, p. 12.

²⁶⁷ Ex. 207, Marke Rebuttal, pp. 14-15. OPC's recommended disallowance and discussion of third-party contractors focused on operators and not the third-party contractor used for customer service functions as it appears to be addressed under issue 14, Call Center Expense, which has been settled.

²⁶⁸ Ex. 6, Cox Surrebuttal, p. 33, pp. 36-39, and p. 39.

²⁶⁹ Tr. Vol. 11, p. 82.

217. OPC based its allegation of imprudence on its calculation of the cost to hire nine in-house personnel divided by geographic region. The nine would receive an approximate salary of \$60,000 each, which OPC contended is higher than the mean wage of \$48,220 according to the Missouri Economic Research and Information Center (MERIC) database. The remaining \$60,000 would be used for overtime and other expenses.²⁷⁰

218. The Company's experience is that the salary required to hire a water and wastewater system operator is much greater than \$60,000 – driven in large part by the rapid retirement of skilled operators.²⁷¹

219. Confluence Rivers argued that outdated data, employment market changes, and other factors related to operating systems in rural Missouri make using the MERIC database as the sole and only data set for setting salaries inappropriate. The MERIC database utilized by OPC uses 2021 salary levels as a data source and OPC did not adjust its numbers to reflect the cost of living adjustment factors for 2022 and 2023. Adjusting OPC's \$48,222 estimated salary for cost of living would result in an average salary of \$55,508.²⁷²

220. Additionally, the MERIC data may not be reliable due to its opt-in reporting.
²⁷³

221. OPC's analysis also fails to recognize a significant market change – the 4.1% Missouri unemployment rate in 2021 dropped to 2.5% in 2022. This change means

²⁷⁰ Ex. 207, Marke Rebuttal, pp. 9-10.

²⁷¹ Ex. 6, Cox Surrebuttal, p. 33, and pp. 35-36.

²⁷² Ex. 19, Thies Surrebuttal, page 5.

²⁷³ Tr. Vol. 11, p. 95.

that fewer individuals were looking for work and the cost to attract an employee could be higher as a result.²⁷⁴

222. OPC's estimated total salary and benefits package only incorporated \$11,780 or 19.6% for the total costs for payroll taxes and benefits. However, the Bureau of Labor Statistics suggests that the portion of a total compensation package for private company employees that comprises taxes and benefits is 29.5%.²⁷⁵

223. To include payroll taxes and benefits at 29.5% instead of 19.6% to the OPC estimate of \$60,000 in salary and benefits per water or wastewater operator would be updated to a range of \$71,760 to \$77,700.²⁷⁶

224. Including cost of living adjusted salary levels, 29.5% payroll taxes and benefits, estimated training and equipment costs, and the estimated vehicle costs, the cost to employ one operator is \$91,463 per year.²⁷⁷

225. In Confluence Rivers' experience, it was more economical to identify and retain third-party contractors who have the required certifications rather than hire, train, and retain individual employees to reach the same level of qualifications and experience.²⁷⁸

226. A water operator or wastewater operator is someone who has a certification to operate a water or wastewater plant, respectively. The certification includes training and time spent operating a water or wastewater plant. Certification in each of the different

²⁷⁴ Ex. 18, Thies Rebuttal, p. 17.

²⁷⁵ Ex. 19, Thies Surrebuttal, p. 6.

²⁷⁶ Ex. 19, Thies Surrebuttal, p. 6.

²⁷⁷ Ex. 19, Thies Surrebuttal, Schedule BT-SR-1.]

²⁷⁸ Ex. 20, Thomas Direct, p. 5.

classes of plant require different tests, different educational components, different amounts of experience, and ongoing continuing education credits.²⁷⁹

227. A wastewater operator needs certification from DNR.²⁸⁰

228. A water operator needs certification from DNR.²⁸¹

229. OPC suggested that the job of water or wastewater system operator may need only a high-school education.²⁸²

230. OPC identified operator certification courses offered by DNR lasting from one day to 12 days.²⁸³

231. Certified water and wastewater operators employ technicians.²⁸⁴

232. Technicians include skilled trades such as mechanics, plumbers, and electricians.²⁸⁵

233. Technicians do not need to be certified.²⁸⁶

234. A technician can perform certain tasks under the supervision and direction of a certified operator.²⁸⁷

235. Dispersed system locations and the number of connections negatively impact the ability of Confluence Rivers to cost-effectively employ an in-house workforce of sufficient size to perform all required operations and maintenance functions.²⁸⁸

²⁷⁹ Tr. Vol. 11, p. 37.

²⁸⁰ Tr. Vol. 11, p. 25.

²⁸¹ Tr. Vol. 11, p. 25.

²⁸² Tr. Vol. 11, p. 120.

²⁸³ Ex. 207, Marke Rebuttal, p. 14.

²⁸⁴ Tr. Vol. 11, p. 27.

²⁸⁵ Tr. Vol. 11, p. 27.

²⁸⁶ Tr. Vol. 11, p. 38.

²⁸⁷ Tr. Vol. 11, p. 110.

²⁸⁸ Ex. 20, Thomas Direct, p. 5.

236. The Company recently completed an RFP that covered most of its Missouri systems, and estimated that the monthly operations and maintenance expense has decreased 5.53% per system.²⁸⁹

237. OPC's estimate of \$600,000 in costs for in-house operators did not take into account the cost for vehicle expense, supplies, tools, or personal protective equipment.²⁹⁰

238. OPC's initial estimate of the cost of hiring in-house personnel did not include vehicles, fuel, vehicle insurance or vehicle maintenance, but during the hearing estimated a cost of \$12,000 annually per region.²⁹¹

239. OPC's initial estimate of the cost of hiring in-house personnel did not include offices, warehouse space, maintenance, or utilities, but during the hearing estimated a cost of \$12,000 annually per region.²⁹²

240. OPC's estimate of the cost of hiring in-house personnel did not consider the availability of qualified workers, unemployment levels by region, or unemployment levels statewide.²⁹³

241. In the present instance, the use of third-party contractor operators avoids otherwise necessary expenditures such as trucks, tools, training, and warehouses.²⁹⁴ Third-party contractor operators store the chemicals used in Confluence Rivers' water and sewer systems.²⁹⁵

²⁸⁹ Ex. 20, Thomas Direct, p. 12.

²⁹⁰ Ex. 19. Thies Surrebuttal, p. 6.

²⁹¹ Tr. Vol. 11, pp. 118-119.

²⁹² Tr. Vol. 11, p. 119.

²⁹³ Tr. Vol. 11, pp. 121-122.

²⁹⁴ Tr. Vol. 11, p. 83.

²⁹⁵ Tr. Vol. 8, p. 157.

242. OPC's alternative recommendation was to replace the third-party operators with 20 in-house employees, which would result in a cost savings of \$493,000 based on an annual salary of \$60,000 per employee.²⁹⁶

243. Because the Company's systems are scattered across Missouri, travel time to and from the systems is a necessary consideration of any staffing analysis.²⁹⁷

244. Confluence Rivers estimated that the annual cost of an internal operations department would be \$2,248,018.²⁹⁸

245. OPC's recommended disallowance of a portion of Confluence Rivers' third-party operator's expense would likely impair the quality of service.²⁹⁹

246. Staff agreed that it was possible that contracting for third-party operators in this situation may be a lower cost option than having in-house personnel, depending on inputs and circumstances.³⁰⁰

247. As part of a settlement,³⁰¹ the Company will make a full cost-benefit analysis study of whether it is more cost-effective to use third-party operators as opposed to in-house personnel.³⁰²

Conclusions of Law

No additional Conclusions of Law are necessary to this issue.

Issue Presented by the Parties

Should the Commission order a disallowance related to Confluence Rivers' contract-based business model, and if so, how much?

²⁹⁶ Tr. Vol. 11, pp. 117-118

²⁹⁷ Ex. 6, Cox Surrebuttal, p. 39.

²⁹⁸ Ex. 6, Cox Surrebuttal, p. 40; and Ex. 19, Thies Surrebuttal, p. 7.

²⁹⁹ Staff's Initial Brief, p. 40.

³⁰⁰ Tr. Vol. 11, p. 112.

³⁰¹ *Order Approving Agreements*, issued September 27.

³⁰² Tr. Vol. 11, p. 108.

Decision Regarding Third-Party Contractor Operators

OPC's allegation of imprudence rests solely on a cost comparison between the actual costs of approximately \$1.6 million for third-party contract operators (over 31 operators, technicians and other employees including skilled labor providing service 24/7/365) versus OPC's estimate of \$600,000 for nine operators in nine regions.³⁰³ OPC attempted to show that operations and maintenance can be done more cheaply than it is currently. OPC then attempted to show that the amount of savings, approximately \$1.2 million, is large enough to raise a question of imprudence regarding Confluence Rivers decision to use third-party contractors for operations and maintenance of its systems. The Commission finds that OPC has not carried its burden of showing inefficiency or improvidence that created serious doubt as to the prudence of third-party contract operators in its suggestion that nine full time in-house employees can effectively replace a 31-employee third-party, 24 hours a day ("24/7/365") contract operator system.

OPC's analysis oversimplified the complexities required to operate the numerous water systems and wastewater systems owned by Confluence Rivers. OPC's estimate of a \$60,000 salary for operators significantly underestimated the realistic salary required to attract a skilled operator as it did not include cost of living adjustments and the appropriate percentage for benefits and taxes, which Confluence Rivers estimated would more appropriately be in the range of \$71,760 to \$91,463. OPC's analysis did not appropriately take into consideration the need for additional staff such as technicians. It also did not adequately address in-house employee needs such as vehicles, vehicle insurance, vehicle maintenance, office space, warehouse space, maintenance for the office and

³⁰³ OPC's Initial Brief offered a calculation for 15 in-house employees. Because this was offered in briefs, it is not in evidence and will not be considered except in limited references to show that it falls short regardless.

warehouse, or utility costs for the office(s) and warehouse(s). Further, OPC's estimated costs do not take into consideration the low unemployment levels in Missouri, the availability of qualified certified operators and OSHA requirements that may impact staffing.

OPC's calculations do not address two essential advantages of Confluence Rivers' current system – 24/7/365 coverage of its operators; and skilled labor. OPC offered no evidence that its 9 (or 20) employees would be on call 24/7/365.

Confluence Rivers' systems are typically distressed when purchased, and the Commission finds those repairs – with the variety of components and hence a variety of needed licensing – would be unlikely to be able to be addressed by an employee with only a high school education and holding an operator's certificate obtained after attending a one-day seminar. The cost to replace the skilled trades currently working as technicians under the supervision of third-party operators is also not addressed by OPC.

OPC failed to adequately address what changed from its initial view that third-party operators were a good idea to being an imprudent choice. OPC also failed to address Staff's concern that essentially firing the 31 third-party contract operators before hiring the nine (or 20) in-house personnel would likely impair the current quality of service. And OPC failed to adequately explain why it would not be better to make such a decision after the cost-benefit study that is agreed to, rather than immediately disallow recovery of the cost of the third-party contractors prior to hiring and training replacement operators.

Lastly, OPC has not supplied sufficient evidence for the Commission to be able to find that actual or financial harm to ratepayers has occurred. Thus, the Commission concludes that OPC has not raised a sufficient question or doubt as to the prudence of Confluence Rivers' decision to continue using the third-party contract operators.

CONCLUSION:

The Commission, having considered the competent and substantial evidence upon the whole record, makes the above findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making these findings. Any failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission did not consider relevant evidence, but indicates rather that omitted material is not dispositive of this decision.

Except as otherwise set out in the body of this order, the Commission finds that Confluence Rivers has met its burden of proof to show that an increased rate is just and reasonable. Thus, the Commission concludes, based upon its review of the whole record that rates approved as a result of this order support the provision of safe and adequate service. The revenue requirement authorized by the Commission in this case is no more than what is sufficient to keep Confluence Rivers' utility plant in proper repair for effective public service and provide to Confluence Rivers' investors an opportunity to earn a reasonable return upon funds invested.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.³⁰⁴ To allow Confluence Rivers the opportunity to implement the approved rates beginning closest to the calculated operation of law date (November 20), the Commission finds it reasonable to make this order effective in less than 30 days.

³⁰⁴ Section 386.490.2, RSMo.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on December 21, 2022, and assigned Tracking Nos. YW-2023-0113 and YS-2023-0114 are rejected.

2. The income tax expense for the revenue requirement shall be calculated in this rate case consistent with the methodology used by Staff in prior Confluence Rivers' rate cases. Confluence Rivers is directed to calculate income tax expense by multiplying the rate base by the Commission authorized rate of return and then the statutory tax rate.

3. Acquisition costs in part shall be recovered through a capitalization of some costs and a five-year amortization without rate base treatment of some other costs, as described in the body of this order.

4. Confluence Rivers shall continue to keep timesheets for all employees other than the executive and director staff positions identified in the body of this order.

5. The appropriate cost of capital shall be based on a ROE of 9.90%, a cost of debt of 6.60%, and a hypothetical capital structure of 50% equity and 50% debt. Confluence River will maintain records of all patronage credits received related to its debt issuances until its next rate case.

6. OPC's request for a disallowance regarding AMI investment in Indian Hills and Hillcrest is denied.

7. OPC's request for a disallowance regarding third-party contracting is denied.

8. Confluence Rivers is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order and the *Order Approving Agreements*, issued September 27, 2023.

9. This *Report and Order* will become effective on November 4, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Hatcher, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of a Determination of Special	)	
Contemporary Resource Planning Issues to be	)	
Addressed by Ameren Missouri in its Next	)	<u>File No. EO-2024-0042</u>
Triennial Compliance Filing or Next Annual	)	
Update Report	)	

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

ELECTRIC

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 25th day of October, 2023.

In the Matter of a Determination of Special	)	
Contemporary Resource Planning Issues to be	)	
Addressed by Ameren Missouri in its Next	)	<u>File No. EO-2024-0042</u>
Triennial Compliance Filing or Next Annual	)	
Update Report	)	

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

Issue Date: October 25, 2023

Effective Date: November 4, 2023

A provision in the Commission's electric utility resource planning rule, 20 CSR 4240-22.080(4), requires Missouri's electric utilities to consider and analyze special contemporary issues in their integrated resource plan (IRP) triennial compliance filings or in their annual IRP update reports. The regulation provides that by September 15 of each year, the Commission's Staff (Staff), the Office of the Public Counsel (OPC), and other interested stakeholders may file suggested issues for consideration. The regulation allows the utilities and other stakeholders until October 1 to file comments regarding the suggested issues. The Commission is then to issue an order by November 1 of each year specifying the list of special contemporary issues that each electric utility must address.

OPC and Sierra Club filed suggested special contemporary issues for Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) to analyze and respond to in its annual update IRP Filing. Ameren Missouri filed responses to those suggestions.

The Commission must now determine what special contemporary issues Ameren Missouri should address.

This is not a contested case. The Commission does not need to hear evidence before reaching a decision and does not need to make findings of fact and conclusions of law in announcing that decision.¹ The Commission's rule gives the Commission broad discretion in determining what issues a utility should be required to address, indicating:

[t]he purpose of the contemporary issues lists is to ensure that evolving regulatory, economic, financial, environmental, energy, technical, or customer issues are adequately addressed by each utility in its electric resource planning. Each special contemporary issues list will identify new and evolving issues but may also include other issues such as unresolved deficiencies or concerns from the preceding triennial compliance filing.²

After considering these factors, the Commission will adopt the list of special contemporary issues set forth in this order. The Commission has chosen these issues because they are of particular interest and importance and should be addressed in Ameren Missouri's IRP filing. Ameren Missouri may already plan to address these issues in its triennial IRP filing apart from their designation as special contemporary issues, or it may believe it has already adequately addressed some of these issues in a previous IRP filing, or some other filing. If that is so, it does not need to undertake any additional analysis because of this designation and may simply explain in its upcoming IRP filing exactly where the Commission can find that other analysis. The Commission does not intend that a utility spend an unreasonable amount to address any special contemporary issue. If Ameren Missouri finds that the cost to address a special contemporary issue is

¹ *State ex rel. Public Counsel v. Public Service Com'n*, 259 S.W.3d 23, 29 (Mo. App. W.D. 2008).

² 20 CSR 4240-22.080(4).

excessive, it may explain its concerns in its next IRP filing, while addressing the issue to the extent reasonably possible.

To give Ameren Missouri as much time as possible to examine these issues before its next IRP filing, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri shall analyze and document the following special contemporary issues in its 2024 annual update IRP filing:

A. Model and explicitly present future resource adequacy scenarios based on the following assumptions:

1. With demand-side rates and traditional demand-side management investments (e.g. MEEIA);

2. Only demand-side rates without MEEIA investment;

3. Neither demand-side rates nor MEEIA (but maintain naturally occurring energy efficiency adoption); and

4. Indicate whether or not naturally occurring savings and/or federally-sponsored DSM savings are included in the modeling. If yes, these savings should be identified and separated as well.

5. Include an explicit section within the demand-side management volume and the executive summary where low, medium, and high TOU differentials are modeled and presented with expected demand savings articulated separate and aside from other demand side management practices.

B. Analyze and produce estimated costs for mothballing any dispatchable generation resource that is subject to a planned retirement in the

20-year planning period. Estimates should include all costs including the minimum continued O&M of the mothballed units.

C. Analyze and report on the ability of the planned resource additions in Ameren Missouri's current preferred plan to continue to meet energy needs in all hours of each year.

D. Analyze and report on the ability of the planned resource additions in Ameren Missouri's current preferred plan to provide essential reliability services including the capability of the planned resource to support voltage, frequency, and dispatchability.

E. Analyze the risk to Ameren Missouri's customers of Ameren Missouri relying on just-in-time fuel for electric generation and the interdependent natural gas and electric infrastructure. The report should include the results of the analysis and the measures the utility is taking to mitigate this risk.

F. Model for a low, medium, and high participation scenario of commercial and industrial customers electing to participate in demand response activities based on the introduction of a third-party(s) ARC within its footprint and provide an analysis on what the impact said ARC would have on Ameren Missouri's IRP.

G. Consider in its IRP an application to the U.S. Department of Energy (DOE) Energy Infrastructure Reinvestment Loan Program and discuss any potential benefits this Loan Program may have.

H. Describe the inclusion of Virtual Power Plants (VPP) within the Company's IRP update or triennial analysis. In doing so, identify which distributed

energy resources (DER) or compliment of DERs were included in the analysis, consider both the retail VPP and market-participant VPP perspectives, and explain the benefits and challenges related to scalability attributed of VPPs. Address VPP contributions to the utility's resource adequacy requirements, grid stability, resiliency, transmission and distribution capacity deferrals, load management strategies, and system optimization. Discuss limitations, if any, to incorporating VPPs in the Company's distribution or resource planning analysis due to challenges of aggregating and dispatching retail and market-participants' DERs.

I. In light of the emerging developments around Distributed Energy Resources (DER) and VPPs, address what efforts the Company made in its IRP modeling to address distribution planning opportunities and challenges.

J. Consider discussing storage deployment strategies, including the repurposing of retired automotive batteries, exemplified by the Tesla Pilot program in Australia. Additionally, explore investments in energy storage pilot projects with the specific objective of enhancing the reliability and capacity accreditation of renewable energy resources.

2. This order shall become effective on November 4, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of a Determination of Special)
Contemporary Resource Planning Issues to be)
Addressed by Evergy Missouri, Inc. d/b/a) **File No. EO-2024-0043**
Evergy Missouri Metro in its Next Triennial)
Compliance Filing or Next Annual Update)
Report)

In the Matter of a Determination of Special)
Contemporary Resource Planning Issues to be)
Addressed by Evergy Missouri West, Inc. d/b/a) **File No. EO-2024-0044**
Evergy Missouri West in its Next Triennial)
Compliance Filing or Next Annual Update)
Report)

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

ELECTRIC

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 25th day of October, 2023.

In the Matter of a Determination of Special)
Contemporary Resource Planning Issues to be)
Addressed by Evergy Missouri, Inc. d/b/a) **File No. EO-2024-0043**
Evergy Missouri Metro in its Next Triennial)
Compliance Filing or Next Annual Update)
Report)

In the Matter of a Determination of Special)
Contemporary Resource Planning Issues to be)
Addressed by Evergy Missouri West, Inc. d/b/a) **File No. EO-2024-0044**
Evergy Missouri West in its Next Triennial)
Compliance Filing or Next Annual Update)
Report)

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

Issue Date: October 25, 2023

Effective Date: November 4, 2023

A provision in the Commission's electric utility resource planning rule, 20 CSR 4240-22.080(4), requires Missouri's electric utilities to consider and analyze special contemporary issues in their integrated resource plan (IRP) triennial compliance filings or in their annual IRP update reports. The regulation provides that by September 15 of each year, the Commission's Staff (Staff), the Office of the Public Counsel (OPC), and other interested stakeholders may file suggested issues for consideration. The regulation allows the utilities and other stakeholders until October 1 to file comments regarding the suggested issues. The Commission is then to issue an order by November 1 of each year specifying the list of special contemporary issues that each electric utility must address.

OPC, Sierra Club, Council for the New Energy Economics', and the City of Kansas City, Missouri filed suggested special contemporary issues for Eversource Energy Missouri, Inc. d/b/a Eversource Energy Missouri Metro and Eversource Energy Missouri West, Inc. d/b/a Eversource Energy Missouri West (collectively, Eversource) to analyze and respond to in its 2024 triennial IRP Filing. Eversource filed responses to those suggestions. The Commission must now determine what special contemporary issues Eversource should address.

This is not a contested case. The Commission does not need to hear evidence before reaching a decision and does not need to make findings of fact and conclusions of law in announcing that decision.¹ The Commission's rule gives the Commission broad discretion in determining what issues a utility should be required to address, indicating:

[t]he purpose of the contemporary issues lists is to ensure that evolving regulatory, economic, financial, environmental, energy, technical, or customer issues are adequately addressed by each utility in its electric resource planning. Each special contemporary issues list will identify new and evolving issues but may also include other issues such as unresolved deficiencies or concerns from the preceding triennial compliance filing.²

After considering these factors, the Commission will adopt the list of special contemporary issues set forth in this order. The Commission has chosen these issues because they are of particular interest and importance and should be addressed in Eversource's IRP filing. Eversource may already plan to address these issues in its triennial IRP filing apart from their designation as special contemporary issues, or it may believe it has already adequately addressed some of these issues in a previous IRP filing, or some other filing. If that is so, it does not need to undertake any additional analysis because of this designation and may simply explain in its upcoming IRP filing exactly where the

¹ *State ex rel. Public Counsel v. Public Service Com'n*, 259 S.W.3d 23, 29 (Mo. App. W.D. 2008).

² 20 CSR 4240-22.080(4).

Commission can find that other analysis. The Commission does not intend that a utility spend an unreasonable amount to address any special contemporary issue. If Evergy finds that the cost to address a special contemporary issue is excessive, it may explain its concerns in its next IRP filing, while addressing the issue to the extent reasonably possible.

To give Evergy as much time as possible to examine these issues before its next IRP filing, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. Evergy shall analyze and document the following special contemporary issues in its 2024 triennial IRP filing:

A. Model and explicitly present future resource adequacy scenarios based on the following assumptions:

1. With demand-side rates and traditional demand-side management investments (e.g. MEEIA);
2. Only demand-side rates without MEEIA investment;
3. Neither demand-side rates nor MEEIA (but maintain naturally occurring energy efficiency adoption); and
4. Indicate whether or not naturally occurring savings and/or federally-sponsored DSM savings are included in the modeling. If yes, these savings should be identified and separated as well.
5. Include an explicit section within the demand-side management volume and the executive summary where low, medium, and high

TOU differentials are modeled and presented with expected demand savings articulated separate and aside from other demand side management practices.

B. Account for rooftop solar adoption in the load forecast, and track its solar subscription program.

C. Provide detailed assumptions surrounding battery cycle life on any planned future investment in storage. This should include, at a minimum, expected frequency and duration of operational usage of the battery resource. In short, the analysis should be able to reasonably demonstrate that the utility-scale storage investment will be operational for X period based on articulated assumed usage pattern.

D. Analyze and report on the ability of the planned resource additions in Eversource's current preferred plans to continue to meet energy needs in all hours of each year.

E. Model for a low, medium, and high participation scenario of commercial and industrial customers electing to participate in demand response activities based on the introduction of a third-party(s) ARC within its footprint and provide an analysis of what the impact said ARC would have on Eversource's IRP.

F. Evaluate the cost impact of the EPA's proposed rules for Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants.

G. Describe the inclusion of Virtual Power Plants (VPP) within the Company's IRP update or triennial analysis. In doing so, identify which distributed energy resources (DER) or complement of DERs were included in the analysis, consider both the retail VPP and market-participant VPP perspectives, and explain

the benefits and challenges related to scalability attributed of VPPs. Address VPP contributions to the utility's resource adequacy requirements, grid stability, resiliency, transmission and distribution capacity deferrals, load management strategies, and system optimization. Discuss limitations, if any, to incorporating VPPs in the Company's distribution or resource planning analysis due to challenges of aggregating and dispatching retail and market-participants' DERs.

H. In light of the emerging developments around Distributed Energy Resources (DER) and VPPs, address what efforts the Company made in its IRP modeling to address distribution planning opportunities and challenges.

I. Consider discussing storage deployment strategies, including the repurposing of retired automotive batteries, exemplified by the Tesla Pilot program in Australia. Additionally, explore investments in energy storage pilot projects with the specific objective of enhancing the reliability and capacity accreditation of renewable energy resources.

2. This order shall become effective on November 4, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of a Determination of Special	)	
Contemporary Resource Planning Issues to be	)	
Addressed by The Empire District Electric	)	<u>File No. EO-2024-0045</u>
Company d/b/a Liberty in its Next Triennial	)	
Compliance Filing or Next Annual Update	)	
Report	)	

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

ELECTRIC

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 25th day of October, 2023.

In the Matter of a Determination of Special	)	
Contemporary Resource Planning Issues to be	)	
Addressed by The Empire District Electric	)	<u>File No. EO-2024-0045</u>
Company d/b/a Liberty in its Next Triennial	)	
Compliance Filing or Next Annual Update	)	
Report		

**ORDER ESTABLISHING SPECIAL CONTEMPORARY RESOURCE
PLANNING ISSUES**

Issue Date: October 25, 2023

Effective Date: November 4, 2023

A provision in the Commission's electric utility resource planning rule, 20 CSR 4240-22.080(4), requires Missouri's electric utilities to consider and analyze special contemporary issues in their integrated resource plan (IRP) triennial compliance filings or in their annual IRP update reports. The regulation provides that by September 15 of each year, the Commission's Staff (Staff), the Office of the Public Counsel (OPC), and other interested stakeholders may file suggested issues for consideration. The regulation allows the utilities and other stakeholders until October 1 to file comments regarding the suggested issues. The Commission is then to issue an order by November 1 of each year specifying the list of special contemporary issues that each electric utility must address.

OPC filed suggested special contemporary issues for The Empire District Electric Company d/b/a Liberty (Liberty) to analyze and respond to in its annual update IRP Filing.

Liberty filed responses to those suggestions. The Commission must now determine what special contemporary issues Liberty should address.

This is not a contested case. The Commission does not need to hear evidence before reaching a decision and does not need to make findings of fact and conclusions of law in announcing that decision.¹ The Commission's rule gives the Commission broad discretion in determining what issues a utility should be required to address, indicating:

[t]he purpose of the contemporary issues lists is to ensure that evolving regulatory, economic, financial, environmental, energy, technical, or customer issues are adequately addressed by each utility in its electric resource planning. Each special contemporary issues list will identify new and evolving issues but may also include other issues such as unresolved deficiencies or concerns from the preceding triennial compliance filing.²

After considering these factors, the Commission will adopt the list of special contemporary issues set forth in this order. The Commission has chosen these issues because they are of particular interest and importance and should be addressed in Liberty's IRP filing. Liberty may already plan to address these issues in its triennial IRP filing apart from their designation as special contemporary issues, or it may believe it has already adequately addressed some of these issues in a previous IRP filing, or some other filing. If that is so, it does not need to undertake any additional analysis because of this designation and may simply explain in its upcoming IRP filing exactly where the Commission can find that other analysis. The Commission does not intend that a utility spend an unreasonable amount to address any special contemporary issue. If Liberty finds that the cost to address a special contemporary issue is excessive, it may explain

¹ *State ex rel. Public Counsel v. Public Service Com'n*, 259 S.W.3d 23, 29 (Mo. App. W.D. 2008).

² 20 CSR 4240-22.080(4).

its concerns in its next IRP filing, while addressing the issue to the extent reasonably possible.

To give Liberty as much time as possible to examine these issues before its next IRP filing, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. Liberty shall analyze and document the following special contemporary issues in its annual update IRP filing:

A. Model and explicitly present future resource adequacy scenarios based on the following assumptions:

1. With demand-side rates and traditional demand-side management investments (e.g. MEEIA);

2. Only demand-side rates without MEEIA investment;

3. Neither demand-side rates nor MEEIA (but maintain naturally occurring energy efficiency adoption); and

4. Indicate whether or not naturally occurring savings and/or federally-sponsored DSM savings are included in the modeling. If yes, these savings should be identified and separated as well.

5. Include an explicit section within the demand-side management volume and the executive summary where low, medium, and high TOU differentials are modeled and presented with expected demand savings articulated separate and aside from other demand side management practices.

B. Analyze and produce estimated costs for mothballing any dispatchable generation resource that is subject to a planned retirement in the

20-year planning period. Estimates should include all costs including the minimum continued O&M of the mothballed units.

C. Model for a low, medium, and high participation scenario of commercial and industrial customers electing to participate in demand response activities based on the introduction of a third-party(s) ARC within its footprint and provide an analysis on what the impact said ARC would have on Liberty's IRP.

D. Describe the inclusion of Virtual Power Plants (VPP) within the Company's IRP update or triennial analysis. In doing so, identify which distributed energy resources (DER) or compliment of DERs were included in the analysis, consider both the retail VPP and market-participant VPP perspectives, and explain the benefits and challenges related to scalability attributed of VPPs. Address VPP contributions to the utility's resource adequacy requirements, grid stability, resiliency, transmission and distribution capacity deferrals, load management strategies, and system optimization. Discuss limitations, if any, to incorporating VPPs in the Company's distribution or resource planning analysis due to challenges of aggregating and dispatching retail and market-participants' DERs.

E. In light of the emerging developments around Distributed Energy Resources (DER) and VPPs, address what efforts the Company made in its IRP modeling to address distribution planning opportunities and challenges.

F. Consider discussing storage deployment strategies, including the repurposing of retired automotive batteries, exemplified by the Tesla Pilot program in Australia. Additionally, explore investments in energy storage pilot projects with

the specific objective of enhancing the reliability and capacity accreditation of renewable energy resources.

2. This order shall become effective on November 4, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the 2022 RES Compliance	)	
Report and 2023 RES Compliance Plan of	)	<u>File No. EO-2023-0358</u>
The Empire District Electric Company d/b/a	)	
Liberty	)	

**NOTICE REGARDING 2022 RES COMPLIANCE
REPORT AND 2023 COMPLIANCE PLAN**

ELECTRIC

§13.1. Energy Efficiency

§42. Planning and management

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
October, 2023.

In the Matter of the 2022 RES Compliance)
Report and 2023 RES Compliance Plan of)
The Empire District Electric Company d/b/a)
Liberty)

File No. EO-2023-0358

**NOTICE REGARDING 2022 RES COMPLIANCE
REPORT AND 2023 COMPLIANCE PLAN**

Issue Date: October 25, 2022

On April 14, 2023,¹ The Empire District Electric Company d/b/a Liberty filed its 2022 Renewable Energy Standard (RES) Compliance Report (Report) and its 2023 Annual RES Standard Compliance Plan (Plan). Commission Rule 20 CSR 4240-20.100(8) requires the Staff of the Commission (Staff) to review RES compliance reports and plans and file a report of its review with the Commission within 45 days of the date of filing. The rule also provides that the Office of the Public Counsel (OPC) and any other interested persons or entities may file comments based on their review of the company's RES compliance report and compliance plan within 45 days of filing with the Commission. That date was May 30.

An application to intervene by the Missouri Department of Natural Resources Division of Energy (Division of Energy) was granted.

On May 24, Liberty filed a Revised RES Report and Plan (Second Report and Plan). On May 26, Staff requested an extension of time to file its report, which was

¹ All dates refer to 2023 unless otherwise indicated.

granted. On May 30, OPC requested an extension of time to respond, which was granted. On June 23, OPC and Staff jointly requested a further extension of time to file a report and comments, respectively, which was granted. The extension requested on June 23 was due to Liberty further amending its Second Report and Plan.

On August 4, Liberty filed a Revised RES Report and Plan (Third Report and Third Plan). It also requested a further extension for Staff and OPC to file comments, which was granted. On August 17, Staff filed its Recommendation, which identified several deficiencies in the Third Report, and recommended revising the Third Report. Staff did not identify any deficiencies with the Third Plan.

On August 17, OPC filed its Comments and Memo, which expressed several concerns about the clarity and precision of the Third Report and Third Plan. Specifically, OPC acknowledged that Liberty met the RES requirement, but argued that Liberty's Third Report did not contain the information necessary to show that it met the RES requirement.

Generation and RECs

OPC argued that Liberty should state, plainly, how much of total retail sales were met by its three owned wind facilities in 2022. OPC argued for the inclusion in the Third Report of the vintage of the wind facility Renewable Energy Credits (RECs) that were sold in 2022 and whether shareholders or ratepayers received the benefits from the sale of these RECs. OPC also argued that Liberty should distinguish between the generation and RECs assigned to its shareholders and those available to its retail customers. OPC also cited an apparent discrepancy in a REC transaction with another regulated utility. OPC argued that the confidentiality designation on certain REC value information and not other REC information was confusing. OPC also argued that the Third Report uses imprecise language making it confusing.

Calculation of the Actual Calendar Year Impact

OPC argues that Liberty's Third Report does not calculate the actual calendar year retail rate impact as required by rule. While Liberty provides a compliance cost divided by its Missouri retail rate revenue, OPC seeks details on the make-up of the cost, which is currently addressed at a high level in a highly confidential document, without a public version available.

Incomplete RES Plan

OPC comments that Liberty's Third Plan was not clear enough that certain facilities were not included in retail rates until June 2022.

Facilities Not Necessary to Meet the RES in 2022

OPC stated that two facilities, North Fork Ridge and Kings Point, were not required to meet RES; however, they were utilized. OPC alleges improper management led to these two facilities being required to meet RES. Because Liberty stated that North Fork Ridge and Kings Point were not required to meet 2022 RES compliance, then they should be removed from the Third Plan. Further, OPC recommended a revision to the Third Report that clarifies that Liberty could have met the 2022 RES without the RECs from North Fork Ridge and Kings Point, even though some of their RECs were used.

Retail Rate Impact Calculation

OPC alleges that Liberty's Retail Rate Impact (RRI) calculation was based on information for the total company, not just the Missouri portion. OPC also argued that Liberty should provide details regarding the inclusion of production tax credits in its calculation of the RRI. On September 7, Liberty filed a response indicating it had no objection to scheduling a meeting with Staff and OPC to discuss possible changes in the RRI calculation for future years.

Fourth Report

On September 14, Liberty filed a revised Report (Fourth Report). The Third Plan was not updated – leaving the Fourth Report and Third Plan as the documents under final consideration. The Fourth Report followed a response by Liberty to Staff's and OPC's concerns over the Third Report and Third Plan. Liberty stated it does not believe any amendments were needed in response to OPC's comments.

Comments on the Fourth Report

On September 26, OPC filed a response reiterating its prior concerns (above). OPC also alleged that new language added was confusing in that it altered the values of certain RECs without explanation. OPC requested the Commission address its concerns for the current and future RES filings.

Staff filed no further comments. No other responses were received.

Discussion

The Commission's rule requires the utility to post a redacted copy of its Compliance Report on its website and to provide electronic copies to the Commission, which the Commission is to place on its own website. It also requires the utility to provide the RES Compliance Plan to the Commission, which is to open a docket to receive the Report and Plan and to provide notice. Beyond that, the rule does not identify a required action the Commission is to take regarding Liberty's Fourth Report and Third Plan and any alleged deficiencies in that Fourth Report or Third Plan, except to allow the Commission to direct the utility to provide additional information or to address any concerns or deficiencies identified in the comments.² Consequently, no further action by the Commission is required, and this file shall be closed.

² 20 CSR 4240-20.100(8)(F).



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence	)	
Rivers Utility Operating Company, Inc., for a	)	
Certificate of Convenience and Necessity	)	
Authorizing it to Install, Own, Acquire,	)	<u>File No. SA-2023-0437</u>
Construct, Operate, Control, Manage, and	)	
Maintain a Sewer System in and around the	)	
Village of Luray, Missouri	)	

ORDER APPROVING TRANSFER OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§47. Sewers

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in the Village of Luray, Missouri.

SEWER

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in the Village of Luray, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
November, 2023.

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc., for a)
Certificate of Convenience and Necessity)
Authorizing it to Install, Own, Acquire,)
Construct, Operate, Control, Manage, and)
Maintain a Sewer System in and around the)
Village of Luray, Missouri)

File No. SA-2023-0437

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: November 1, 2023

Effective Date: December 1, 2023

Procedural History

On June 23, 2023, Confluence Rivers Utility Operating Company, Inc. (Confluence) filed the above-referenced applications. Confluence seeks to acquire all or substantially all of the sewer system assets of the Village of Luray, Missouri (Luray). Confluence also asks for a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain that sewer system. Confluence is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. If the Commission approves Confluence’s application, Confluence would provide sewer service for Luray’s 47 customers.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On October 16, 2023, the Staff of the Commission (Staff) filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions. On October 19, 2023, Confluence stated that it accepted Staff's recommended conditions.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule and no party objected to Confluence's application or Staff's recommendation.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."¹ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity that are known as the Tartan factors.

The *Tartan* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.²

¹ Section 393.170.3, RSMo. (Supp. 2022).

² See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

There is a need for the service, as the current customer base has a need and desire for sewer service. Confluence is qualified to provide the service, as it provides service to approximately 4,800 water connections and 5,100 sewer connections throughout Missouri. Confluence has the financial ability to provide the service as Confluence has the resources to operate its utility systems, as well as to purchase new systems. The proposal is economically feasible as Confluence has adequate resources to operate its utility systems. The proposal promotes the public interest as Luray has failed to properly operate and maintain the sewer system. This will be resolved by Confluence purchasing the system and making the appropriate improvements.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to Confluence have been satisfied and that it is in the public's interest for Confluence to provide water and sewer service to the customers currently served by Luray. Further, the Commission finds that Confluence possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from Luray. Thus, the Commission will authorize the transfer of assets and grant Confluence the certificate of convenience and necessity to provide sewer service within the proposed service area, subject to the conditions described by Staff.

Waiver of 60-day notice rule

Confluence's application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). Confluence asserts there is good cause for granting such waiver because it has filed a verified declaration that it has had no communication with the office of the commission within the prior 150 days regarding any

substantive issue likely to be in the case. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Confluence is granted permission to acquire the water and sewer system assets of Luray.

2. Confluence is granted a certificate of convenience and necessity to provide sewer service in the Luray area described in the map and legal description Confluence provided to Staff, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

- a. Confluence shall revise P.S.C. MO No. 13 for the addition of Luray's sewer assets, to become effective before closing on the assets. Also, Confluence shall file tariff sheets for the service area map, service area written description for Luray's sewer assets, and table of contents;
- b. Confluence shall notify the Commission of closing on the assets within 5 days after such closing;
- c. Confluence shall work with the Department of Natural Resources to complete the renewal and transfer of the Operating Permit for the treatment facility;
- d. If closing on the sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until Confluence determines that the transfer of the assets will not occur;
- e. If Confluence determines that a transfer of the assets will not occur, Confluence shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Luray service area in its sewer tariff, and rate and

charges sheet applicable to customers in the Luray service area in the sewer tariff;

- f. Confluence shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
- g. Confluence shall provide training to its call center personnel regarding rates and rules applicable to the Luray customers;
- h. Confluence shall distribute to Luray customers an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets;
- i. Confluence shall provide to the Customer Experience Department ("CXD") Staff an example of its actual communication with Luray customers regarding its acquisition and operations of the sewer system, and how customers may reach Confluence, within 10 days after closing on the assets;
- j. Confluence shall include Luray customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- k. Confluence shall provide to the CXD Staff a sample of 5 billing statements from the first three month's billing for Luray within 10 days of the billings;
- l. Confluence shall file notice in this case outlining completion of the above recommended training, customer communications, notifications and billing within 10 days after such communications and notifications.

3. Confluence is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

4. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

5. This order shall become effective on December 1, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Request for	)	<u>File No. EE-2024-0037</u>
Variance Regarding Its Renewable Energy	)	
Standard Compliance	)	

ORDER GRANTING VARIANCE AND WAIVER

ELECTRIC

§1. Generally

§13.1. Energy Efficiency

§40. Reports, records and statements

§42. Planning and management

The Commission granted a variance where an absence of a large bank of Renewable Energy Credits (RECs) would require the utility to use RECs generated during the compliance year to meet the RES requirements. The rule at issue requires utilities to retire RECs within the compliance calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
November, 2023.

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Request for	)	<u>File No. EE-2024-0037</u>
Variance Regarding Its Renewable Energy	)	
Standard Compliance	)	

ORDER GRANTING VARIANCE AND WAIVER

Issue Date: November 1, 2023

Effective Date: December 1, 2023

On August 16, 2023, Union Electric Company d/b/a Ameren Missouri filed an application for a variance regarding the Commission's Renewable Energy Standard rules. Ameren Missouri requests a variance from 20 CSR 4240-20.100(3)(J).

That rule requires utilities to retire Renewable Energy Credits (RECs) within the compliance calendar year, or by April 15 of the following calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year. Ameren Missouri also asks for a waiver from Commission Rule 20 CSR 4240-4.017(1), the Commission's 60-day notice rule.

In support of its request, Ameren Missouri states that it does not have a large REC bank and expects to use RECs generated during the compliance year. Ameren Missouri will need to retire RECs generated during the 2023 compliance year to meet the RES requirements. Ameren Missouri submits that the 90% requirement forces the Company and its customers to incur RES compliance costs for 2023 that it should be able to avoid.

The Staff of the Commission (Staff) filed its Recommendation on October 16, 2023. Staff recommends that the Commission approve Ameren Missouri's request for a variance from Commission Rule 20 CSR 4240-20.100(3)(J) for the 2023 compliance year. Staff also recommends the Commission grant a waiver to the Commission's 60-day notice requirement. No other party responded to the application or to the Staff Recommendation.

Under 20 CSR 4240-20.100(11), the Commission may grant a variance for good cause shown. The Commission finds that Ameren Missouri has presented good cause for the variance and will grant the requested relief. The Commission further finds that Ameren Missouri has filed a verified declaration that it has not communicated with the Office of the Commission about this case for more than 150 days prior to filing it. Thus, Ameren Missouri is eligible for waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1), and the Commission will waive it.

THE COMMISSION ORDERS THAT:

1. Union Electric Company d/b/a Ameren Missouri's request for variance from Commission Rule 20 CSR 4240-20.100(3)(J) for the 2023 compliance year is granted.
2. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.
3. This order shall become effective on December 1, 2023.
4. This file shall be closed on December 2, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of)
Union Electric, d/b/a Ameren Missouri, and)
Callaway Electric Cooperative for an Order) **File No. EO-2024-0116**
Approving a Second Addendum to a)
Territorial Agreement Regarding Service to)
one Customer in Callaway County, Missouri)

REPORT AND ORDER APPROVING SECOND ADDENDUM TO AN EXISTING TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

§6. Territorial agreements

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

§6. Territorial agreements

§11. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
November, 2023.

In the Matter of the Joint Application of)
Union Electric, d/b/a Ameren Missouri, and)
Callaway Electric Cooperative for an Order)
Approving a Second Addendum to a)
Territorial Agreement Regarding Service to)
one Customer in Callaway County, Missouri)

File No. EO-2024-0116

**REPORT AND ORDER APPROVING SECOND ADDENDUM
TO AN EXISTING TERRITORIAL AGREEMENT**

Issue Date: November 8, 2023

Effective Date: November 18, 2023

This order approves a second addendum to an existing territorial agreement between Union Electric Company, d/b/a Ameren Missouri and Callaway Electric Cooperative. The territory concerned is a single customer located wholly within the service territory of Ameren Missouri.

FINDINGS OF FACT

1. Callaway Electric Cooperative (CEC) is organized under Chapter 394 RSMo to provide electric service to its members located in all or part of two Missouri counties, including Callaway County, in which lies the subject territory.¹

¹ Staff Memorandum, filed October 27, p. 2 of 6.

2. On March 22, 2002, Joint Applicants entered into a territorial agreement (Territorial Agreement), which was approved by the Commission in File No. EO-2002-458 on July 28, 2002.²

3. Article 10 of the existing Territorial Agreement allows the Joint Applicants to agree, on a case-by-case basis and through an addendum to the Territorial Agreement, to allow a structure to receive service from one party even though the structure is located in the electric service territory of the other.³

4. On September 28, 2023,⁴ Ameren Missouri and CEC (Joint Applicants) filed an application for approval of an addendum (Addendum No. 2) to their existing Territorial Agreement.⁵

5. Addendum No. 2 would allow CEC to be the exclusive electric service provider to a new structure being built in Callaway County, Missouri.⁶

6. The Joint Applicants assert that CEC currently has adequate facilities installed on this parcel of land capable of providing the level of electric service that is anticipated and/or has been requested by the property owner, which would prevent an otherwise necessary duplication of facilities.⁷

7. The Joint Applicants' existing Territorial Agreement created exclusive electric service areas for Ameren Missouri and CEC, as between them, within Callaway and Montgomery Counties in Missouri. The parcel that is the subject of this application is

² Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 2 to an Approved Territorial Agreement, filed September 28 (Joint Request), para. 1.

³ Joint Request, para. 1.

⁴ All dates hereafter refer to 2023 unless otherwise stated.

⁵ Joint Request.

⁶ Staff Memorandum, filed October 27, p. 1 of 6.

⁷ Staff Memorandum, filed October 27, pp. 1-2 of 6.

located within the exclusive service territory of Ameren Missouri per the terms of the existing Territorial Agreement.⁸

8. CEC has an existing distribution line routed near the borderline of the subject property that is capable of being conveniently tapped in providing the requested electric service to the new home.⁹

9. Ameren Missouri does not have comparable facilities in the immediate vicinity of the subject property.¹⁰

10. The application includes a statement from the property owner expressing their desire that CEC be the provider of electric service to the property.¹¹

11. The Joint Applicants requested expedited treatment to enable CEC to provide permanent service to this property in a timely manner.¹²

12. On October 27, Staff filed its recommendation that the Commission approve the Addendum No. 2 to the existing Territorial Agreement.¹³

13. Staff further recommended the Commission order Ameren Missouri to file revised illustrative tariffs that reflect the corresponding change in its certificated electric service area in Callaway County, Missouri as identified in Schedule AJB-2 of Staff's Memorandum.¹⁴

14. Staff's recommendation was the only response to the Joint Applicants' application.

15. No responses or objections to Staff's recommendation were received.

⁸ Staff Memorandum, filed October 27, pp. 2-3 of 6.

⁹ Staff Memorandum, filed October 27, p. 3 of 6.

¹⁰ Staff Memorandum, filed October 27, p. 3 of 6.

¹¹ Joint Request, Appendix 10.

¹² Joint Request, para. 17.

¹³ Staff Recommendation, filed October 27.

¹⁴ Staff Memorandum, filed October 27, p. 5 of 6.

16. The Joint Applicants requested the Commission make certain findings:
- a. CEC will have the exclusive right to furnish electric service at the location indicated in Addendum No. 2.
 - b. Joint Applicants' respective service responsibilities beyond the boundaries of the Territorial Agreement will remain unaffected by the terms of Addendum No. 2.
 - c. As stated in the Territorial Agreement, each Joint Applicant will retain their respective rights to serve the remaining existing customers within the exclusive electric service area of the other unless specifically modified by existing or future Commission-approved addenda.
 - d. Ameren Missouri's certificates of public convenience and necessity will not be impaired, except as specifically limited by the Territorial Agreement and its Commission-approved addenda.¹⁵

17. No party responded or objected to the Joint Applicant's request that the Commission make certain findings as described above.

18. Neither Ameren Missouri nor CEC has had any communications with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.¹⁶

CONCLUSIONS OF LAW

A. Ameren Missouri is an electrical corporation subject to the jurisdiction of the Commission under Chapters 386 and 393, RSMo.¹⁷

¹⁵ Joint Request, para. 18.

¹⁶ Joint Request, para. 3; Appendix 3; and Appendix 4.

¹⁷ Staff Memorandum, filed October 27, p. 2 of 6.

B. The Commission has limited jurisdiction over rural electric cooperatives, such as CEC. For the purpose of this case, CEC is subject to the jurisdiction of the Commission for purposes of certain territorial agreements pursuant to Section 394.312.4, RSMo (2016).

C. Section 394.312, RSMo (2016) requires approval by the Commission for territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

D. Pursuant to subsection 394.312.5, RSMo (2016), the Commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.

E. Section 394.312.5, RSMo (2016), requires an evidentiary hearing unless the matter is resolved between the parties.

F. No party has requested a hearing, thus the Commission may make a determination without an evidentiary hearing.¹⁸

Decision

Based upon the verified pleadings and Staff's recommendation, the Commission finds that Ameren Missouri and CEC have agreed to Addendum No. 2 and no person has objected nor requested a hearing. The Commission concludes that Addendum No. 2 to the existing Territorial Agreement, in total, is not detrimental to the public interest and will be approved.

Due to the unopposed request for expedited treatment, the Commission finds it reasonable to make this order effective in less than 30 days. The Commission finds good

¹⁸ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

cause to waive Commission Rule 20 CSR 4240-4.017(1) in that the Joint Applicants have filed verified declarations that they have had no contact with the Commission regarding the application in the 150 days immediately preceding the filing of the application.

THE COMMISSION ORDERS THAT:

1. The application is approved. Addendum No. 2 to the existing Territorial Agreement is approved. A copy of the addendum is attached to this order and incorporated by reference. The signatories are ordered to comply with the terms of the Addendum No. 2.

2. Ameren Missouri and CEC are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to effect the terms and conditions of Addendum No. 2 and to implement the authority granted by the Commission in this order.

3. The Commission makes no rate-making determinations in connection with its approval of Addendum No. 2.

4. As requested by the Joint Applicants, the Commission will order the statements in Finding of Fact 16 supra:

- a. CEC shall have the exclusive right to furnish electric service at the location indicated in Addendum No. 2.
- b. Joint Applicants' respective service responsibilities beyond the boundaries of the Territorial Agreement shall remain unaffected by the terms of Addendum No. 2.
- c. As stated in the Territorial Agreement, each Joint Applicant shall retain their respective rights to serve the remaining existing customers within the exclusive electric service area of the other unless specifically modified by existing or future Commission-approved addenda.

- d. Ameren Missouri's certificates of public convenience and necessity shall not be impaired, except as specifically limited by the Territorial Agreement and its Commission-approved addenda.

5. Commission Rule 20 CSR 4240-4.017(1) is waived for the purposes of this proceeding.

6. Ameren Missouri shall file revised illustrative tariffs that reflect the corresponding change in its certificated electric service area in Callaway County, Missouri as identified in Schedule AJB-2 of Staff's Memorandum no later than December 8, 2023.

7. This order shall become effective on November 18, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water	)	
Company for a Certificate of Convenience and	)	
Necessity Authorizing it to Install, Own,	)	<u>File No. WA-2023-0434</u>
Acquire, Construct, Operate, Control, Manage	)	
And Maintain a Water System and Sewer	)	
System in and around the City of Ironton,	)	
Missouri	)	

ORDER APPROVING TRANSFER OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

ACCOUNTING

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”

§45. Water

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in the City of Ironton, Missouri.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

RATES**§68. Establishment of rate base**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

SEWER**§4. Transfer, lease and sale****§21. Accounting****§22. Valuation**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

VALUATION**§9. Methods or theories generally****§11. Rule, formula or judgment as a guide****§14. For rate making purposes****§15. Purchase or sale price****§78. Water****§79. Sewer**

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in the City of Ironton, Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for

the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§4. Transfer, lease and sale

§23. Accounting

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
November, 2023.

In the Matter of Missouri-American Water)
Company for a Certificate of Convenience and)
Necessity Authorizing it to Install, Own,)
Acquire, Construct, Operate, Control, Manage)
And Maintain a Water System and Sewer)
System in and around the City of Ironton,)
Missouri)

File No. WA-2023-0434

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: November 8, 2023

Effective Date: December 8, 2023

Procedural History

On June 22, 2023, Missouri-American Water Company (MAWC) filed the above-referenced application.¹ The application seeks, among other things, authority for MAWC to acquire and operate the assets of a municipal water and sewer system in Ironton, Missouri. The residents of Ironton overwhelmingly approved selling those assets to MAWC in an November 8, 2022, election.

MAWC also asks for a Certificate of Convenience and Necessity (“CCN”) to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems. MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as

¹ At MAWC’s request, the Commission consolidated File Nos. WA-2023-0434 and SA-2023-0435.

those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission. If the Commission approves MAWC's application, MAWC would provide water service for Ironton's 725 water customers, and sewer service for Ironton's 700 sewer customers.²

In addition, MAWC requests the Commission permit it to use Section 393.320 RSMo (2016) to establish the rate base of the Ironton water and sewer systems.³ Finally, MAWC asks the Commission to waive the 60-day notice requirement MAWC would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On October 12, 2023, the Staff of the Commission (Staff) filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions.

On October 23, 2023, MAWC, Staff, and the Office of the Public Counsel (OPC) filed a Stipulation and Agreement (Stipulation). The Stipulation states that MAWC will not recover any costs associated with printing and mailing of informational material as "transaction, closing, and transition costs" as defined in Section 393.320.5(1) RSMo. Also, on October 23, 2023, MAWC stated that it accepted Staff's recommended conditions. MAWC stated its understanding of certain conditions, and clarified some of Staff's conditions.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order

² The customer counts are approximate.

³ Statutory references are to the 2016 publication unless otherwise stated.

to the contrary of that rule and no party objected to MAWC's application or Staff's recommendation.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."⁴ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity that are known as the Tartan factors.

The *Tartan* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁵

There is a need for the service, as the residents of Ironton currently use the existing water and sewer system. MAWC is qualified to provide the service, as it already provides water service to over 480,000 Missouri customers, and sewer service to over 23,000 Missouri customers. MAWC has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given its prior experience and past

⁴ Section 393.170.3, RSMo. (Supp. 2022).

⁵ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

performance. The proposal promotes the public interest as demonstrated by Ironton's citizens voting to proceed with MAWC's Asset Purchase Agreement.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide water and sewer service to the customers currently served by Ironton. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from Ironton. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Rate base

MAWC seeks to establish the ratemaking rate base associated with the Ironton water and sewer assets in this matter pursuant to Section 393.320, RSMo. That statute states, in pertinent part:

The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a "large water public utility" as it is a "public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service."⁶ Ironton is a "small water utility" as it is a "water

⁶ Section 393.320.1(1) RSMo.

system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.”⁷

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Ironton water and sewer system and is attached to MAWC’s application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the “lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, both the appraisal and the purchase price are \$2,000,000 for the water system, and \$1,700,000 for the sewer system. Thus, Staff recommends a rate base value of \$3,700,000 for the combined assets of Ironton’s water and sewer systems.

Waiver of 60-day notice rule

MAWC’s application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). MAWC has filed a verified declaration that it has had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

⁷ Section 393.320.1(2) RSMo.

THE COMMISSION ORDERS THAT:

1. The Stipulation and Agreement is approved, and its signatories are ordered to comply with its terms.
2. MAWC is granted permission to acquire the water and sewer system assets of the City of Ironton, Missouri.
3. MAWC is granted a certificate of convenience and necessity to provide water and sewer service in the City of Ironton area described in the map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:
 - a. The Commission approves existing MAWC water rates applicable to customers outside the St. Louis region for water and sewer rates applicable to Cedar Hill customers.
 - b. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include adequately identified service area maps, service area written descriptions, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;
 - c. MAWC shall notify the Commission of closing on the assets within 5 days after such closing;
 - d. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, MAWC shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until MAWC determines that the transfer of the assets will not occur;
 - e. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to

the City service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the City service area in both the water and sewer tariffs;

- f. MAWC shall submit the following contracts within 90 days of closing on the assets as confidential documents in this case docket in EFIS:
 - 1. An agreement established with the golf course owner for land application. This agreement may be filed after the Missouri Department of Natural Resources (MDNR) has issued a new operating permit, as MDNR has not been able to provide MAWC what effluent limits with which to design upgrades and will not likely have that permit renewal for some months;
 - 2. A contract for treatment of wastewater from Pilot Knob;
 - 3. MAWC's access agreement to the reservoir;
 - 4. Emergency drinking water interconnection agreements with the City of Pilot Knob and the City of Arcadia, with the understanding that there is not a physical interconnection with the City of Arcadia, and with the understanding that MAWC is working with MDNR to correct the records to show that no physical connection exists.
- g. MAWC shall file a status report in EFIS within one year of closing on the Ironton assets, documenting that all necessary repairs have been completed to enable the hay field to be properly utilized for land application (such as repairing the valve(s) to and sprinkler heads in the field);
- h. Within four years of closing on the Ironton assets, MAWC shall file a status report in EFIS documenting that all the necessary repairs, upgrades and/or maintenance to the wastewater facility has been completed so that: (a) the facility meets all Missouri State Operating Permit limits and/or becomes a no discharge system, and (b), no longer cause pollution of the receiving stream. MAWC shall file the Abatement Order of Consent (AOC), once it has been issued by MDNR, and the requirements, as defined within that document, will be reported in this matter through the period the AOC is in effect;
- i. MAWC shall develop a plan to book all of the City plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions-in-aid-of-construction (CIAC) for appropriate plant accounts, such that current rate base is broken down as \$2,000,000 for the water system, and

\$1,700,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan must be submitted to Staff for review within 60 days after closing on the assets;

- j. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;
- k. MAWC shall adopt the depreciation rates ordered for MAWC in Case No. WR-2020-0344;
- l. MAWC shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the Ironton customers regarding its acquisition and operations of the water system assets, and how may customers reach MAWC, within ten days after closing on the assets;
- m. MAWC shall obtain from the City, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;
- n. Except as required by §393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;
- o. MAWC shall distribute to the City customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;
- p. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;
- q. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Ironton water and sewer system customers;

- r. MAWC shall include the Ironton water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- s. MAWC shall file notice in this case outlining completion of the above recommended training, customer communications, and notifications within ten (10) days after such communications and notifications are complete.

4. MAWC is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

5. The 60 day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

6. This order shall become effective on December 8, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of Evergy Missouri Metro	)	
and Evergy Missouri West's Notice of	)	
Intent to File Applications for Authority to	)	<u>File No. EO-2019-0132</u>
Establish a Demand-Side Programs	)	
Investment Mechanism	)	

**ORDER APPROVING STIPULATION AND AGREEMENT EXTENDING
EVERGY'S MEEIA CYCLE 3 AN ADDITIONAL YEAR**

EVIDENCE, PRACTICE AND PROCEDURE

§8. Stipulation

§30. Settlement procedures

In approving a non-unanimous stipulation, the Commission found that Commission Rule 20 CSR 4240-2.115 allows parties seven days to object to a non-unanimous agreement and also allows the Commission to treat the non-unanimous agreement as unanimous if no party timely objects.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of November, 2023.

In the Matter of Evergy Missouri Metro)
and Evergy Missouri West's Notice of)
Intent to File Applications for Authority to)
Establish a Demand-Side Programs)
Investment Mechanism)

File No. EO-2019-0132

**ORDER APPROVING STIPULATION AND AGREEMENT EXTENDING
EVERGY'S MEEIA CYCLE 3 AN ADDITIONAL YEAR**

Issue Date: November 16, 2023

Effective Date: December 16, 2023

On October 30, 2023, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively, "Evergy"), the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (Public Counsel), the Natural Resources Defense Council, Renew Missouri Advocates, National Housing Trust, and West Side Housing Organization (collectively, "Signatories") filed a Stipulation and Agreement (Agreement) to extend Evergy's Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 programs an additional year.

On May 12, 2022, the Commission approved a stipulation and agreement extending Evergy's MEEIA Cycle 3 an additional year to December 31, 2023. This Agreement seeks to further extend Evergy's MEEIA Cycle 3 to December 31, 2024.

The Agreement represents that the City of St. Joseph, Missouri; Midwest Energy Consumers Group; Missouri Department of Natural Resources – Division of Energy¹; and Spire Missouri Inc., are not signatories to this Agreement, but do not oppose the Commission approving the Agreement.

Commission Rule 20 CSR 4240-2.115 allows parties seven days to object to a non-unanimous agreement and also allows the Commission to treat the non-unanimous agreement as unanimous if no party timely objects. Seven days have elapsed since the signatories filed the Agreement, and no party has objected. Thus, the Commission will treat the Agreement as unanimous, as permitted by Commission Rule 20 CSR 4240-2.115(2).

After reviewing the Agreement, the Commission finds that it is a reasonable resolution of the issues contained therein and should be approved. The Commission will direct Evergy to file tariff sheets to implement the terms of the Agreement.

THE COMMISSION ORDERS THAT:

1. The Agreement filed by the signatories on October 30, 2023, is approved. The signatories are ordered to comply with its terms. A copy of the Agreement is attached to this order and incorporated by reference.
2. Evergy shall file tariff sheets to implement the terms of the Agreement.
3. This order shall be effective on December 16, 2023.

¹ At the time the Division of Energy intervened in this case it was part of the Missouri Department of Economic Development. The Division of Energy is currently part of the Missouri Department of Natural Resources. The Agreement still reflects the Division of Energy as being part of the Missouri Department of Economic Development.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Union Electric Company d/b/a	)	
Ameren Missouri's Application for Approval of	)	
Revised Tariff Sheet Nos. 54, 54.4, & 54.7 to	)	
Continue to Default Certain Residential	)	
Customers to the Evening/Morning Savers	)	
Rate Plan, Motion for Waiver of 60-Day Notice	)	<u>File No. ET-2024-0156</u>
Requirement, Motion for Expedited Treatment,	)	
And if Expedited Treatment Not Granted,	)	
Alternative Motion for Approval of Substitute	)	
Revised Tariff Sheets to Delay Defaulting	)	
Certain Residential Customers to Smart	)	
Savers Rate Plan Beyond March 31, 2024.	)	

ORDER APPROVING APPLICATION AND TARIFF

ELECTRIC

§20. Rates

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§2. Jurisdiction and powers

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

§22. Parties

The Commission denied a request to intervene where the motion did not demonstrate an interest in this matter different from that of the general public and that the movant would be adversely affected by a final order arising from this case. Further, the Commission found nothing in the motion suggesting the proposed intervention would serve the public interest.

RATES

§3. Jurisdictions and powers of the State Commission

§69. Approval or rejection by the Commission

§80. Kinds and forms of rates and charges in general

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of November, 2023.

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Application for Approval of)
Revised Tariff Sheet Nos. 54, 54.4, & 54.7 to)
Continue to Default Certain Residential)
Customers to the Evening/Morning Savers)
Rate Plan, Motion for Waiver of 60-Day Notice)
Requirement, Motion for Expedited Treatment,)
And if Expedited Treatment Not Granted,)
Alternative Motion for Approval of Substitute)
Revised Tariff Sheets to Delay Defaulting)
Certain Residential Customers to Smart)
Savers Rate Plan Beyond March 31, 2024.)

File No. ET-2024-0156

Tracking No. JE-2024-0056

ORDER APPROVING APPLICATION AND TARIFF

Issue Date: November 16, 2023

Effective Date: December 3, 2023

Application

On November 3, 2023, Union Electric Company d/b/a Ameren Missouri filed the above-referenced application. Ameren Missouri also filed tariffs, bearing an effective date of December 3.¹ The application and tariffs request authority to continue to default residential customers to the Evening/Morning Savers rate plan instead of the high-differential Smart Savers rate plan.

¹ Calendar references are to 2023 unless otherwise noted.

The Commission issued notice. The Commission's Staff (Staff) filed a Recommendation on November 9. Staff stated that the application amounts to single-issue ratemaking, which is prohibited in Missouri. Staff recommended the Commission suspend the tariff, and proceed to a general rate case. In the alternative, Staff advised the Commission to reject the tariff.

Consumers Council of Missouri (CCM) and Brett Felber applied to intervene on November 10. Commission Rule 4 CSR 240-2.075(4) allows the Commission to grant intervention to a person who has an interest different from that of the general public and which may be adversely affected by a final order arising from the case, or if granting intervention would serve the public interest.

Ameren Missouri responded on November 15. Ameren Missouri opposed Mr. Felber's application to intervene, and did not oppose CCM's application to intervene. Ameren Missouri further argued its application does not constitute single-issue ratemaking or violate the filed-rate doctrine.

CCM's application meets the Commission's standard for intervention in that CCM represents low-income and vulnerable customers, and its intervention is in the public interest. Mr. Felber's motion does not demonstrate that he has an interest in this matter different from that of the general public and that he will be adversely affected by a final order arising from this case. Further, the Commission finds nothing in Mr. Felber's motion suggesting his proposed intervention would serve the public interest. Thus, Mr. Felber's application to intervene is denied.

Discussion

Ameren Missouri asks to continue to default residential customers to its low-differential Evening/Morning Savers rate plan, instead of the high-differential Smart Savers rate plan. Residential customers are free to change their choices at any time, including switching their TOU plan multiple times a year. Ameren Missouri's proposed tariff is merely seeking to modify the details as to which of the multiple TOU rate choices is the default in the TOU rate program in its tariffs.

Staff is concerned that approving the tariff would result in single-issue ratemaking. But Ameren Missouri is not requesting that the Commission change or even limit access to any rates. Instead, it is requesting that from the multiple TOU rate options included in its current tariff, the Commission allow Ameren Missouri to switch the default or plan to which a customer shall be placed from the Smart Savers back to the current TOU Default Evening/Morning Savers rate plan.

Ameren Missouri's application does not seek to change the price per kWh the Commission established under the approved TOU rate implementation plan. What the application does request is to modify the tariff language that determines what TOU rate is first applied to customers who do not choose a specific TOU rate—the default TOU rate. Ameren Missouri's application is not a collateral attack on prior rate cases' Reports and Orders, but simply requesting approval of a tariff filing to modify the default in TOU choices to customers.

The motion for expedited treatment is moot, as the tariffs will take effect on 30 days' notice, as allowed by statute. The Commission may approve this tariff without suspension thereof, and without a hearing.²

Commission Rule 20 CSR 4240-4.017(1) required parties to give the Commission 60 days' notice before filing a case. The Commission may waive this rule for good cause shown. Ameren Missouri has demonstrated good cause by filing a verified declaration stating that circumstances prevented filing the required notice and delaying the filing for 60 days would cause harm.

To allow the tariffs to take effect on December 3, 2023, so that Ameren Missouri may inform its customers in a timely manner to their TOU choices, the Commission finds it reasonable to make its order effective in less than 30 days after issuance.

THE COMMISSION ORDERS THAT:

1. The application is approved.
2. The following tariff sheets filed by Ameren Missouri on November 3, 2023 (Tariff Tracking No. JE-2024-0056), are approved to become effective on December 3, 2023:

P.S.C. MO. No. 6
7th Revised Sheet No. 54, Cancelling 6th Revised Sheet No. 54
5th Revised Sheet No. 54.4, Cancelling 4th Revised Sheet No. 54.4
3rd Revised Sheet No. 54.7, Cancelling 2nd Revised Sheet No. 54.7

² See *In re KCP&L*, 509 S.W.3d 757, 785 (Mo.App. W.D. 2016); *State ex rel. Coffman v. PSC*, 121 S.W.3d 534, 539 (Mo.App. W.D. 2003).

3. Commission Rule 20 CSR 4240-4.017(1) is waived for this application.
4. The motion for expedited treatment is denied as moot.
5. Consumers Council of Missouri's application to intervene is granted.
6. Brett Felber's application to intervene is denied.
7. This order shall become effective on December 3, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Holsman, Kolkmeyer and
Hahn CC., concur.
Rupp, Chm., Holsman, C., dissent.

Pridgin, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

Brett Felber,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2023-0395</u>
	)	
Union Electric Company d/b/a Ameren	)	
Missouri,	)	
Respondent.	)	

REPORT AND ORDER

ELECTRIC

§37. Liability for damage

The Commission cannot grant a relief in equity or award punitive damages.

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§4. Presumption and burden of proof

§24. Procedures, evidence and proof

§26. Burden of proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

§1. Generally

§6. Weight, effect and sufficiency

The Commission found that only genuine disputes as to material facts preclude summary determination. The Commission denied a motion for summary determination as a disagreement of a due date, a material fact, still existed.

§2. Jurisdiction and powers

The Commission cannot grant a relief in equity or award punitive damages.

§2. Jurisdiction and powers

§9. Particular kinds of evidence generally

§24. Procedures, evidence and proof

Where the language of the tariff differed from a stipulation and agreement, the Commission found that the utility failed to comply with the terms of the Commission order approving stipulation and agreement.

§5. Admissibility**§24. Procedures, evidence and proof**

The Commission denied several motions seeking restoration of electric service as the motions either sought a ruling without the Commission considering properly admitted evidence, or were based on events occurring after the evidentiary hearing.

§6. Weight, effect and sufficiency

The Commission found that Commission approved tariffs have the same force and effect as statutes.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

The Commission found that a courtesy email providing the terms of a payment agreement is a pending payment agreement and not a payment agreement. This finding was supported by the complainant having prior payment agreements indicating sufficient experience to know that the agreement does not become effective until the initial payment.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

An argument that a rule restricting disconnections to days when utility personnel are available for reconnection is inapplicable was rejected by the Commission because the rule does not discuss meters whatsoever, and is therefore applicable no matter what kind of meter a customer possesses.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

In denying the allegation that the utility denied service, the Commission relied upon the credibility of witnesses.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

In denying the allegation that the utility denied a medical hardship extension, the Commission relied upon the submitted evidence showing the necessary paperwork was submitted after disconnection.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

In denying the allegation that the utility did not remove amounts discharged in bankruptcy, the Commission relied upon the records of the utility and the complainant's failure to submit supportive evidence.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

In denying the allegation that the utility's customer service was rude to the complainant and called him a liar, the Commission relied upon the credibility of witnesses.

§6. Weight, effect and sufficiency**§9. Particular kinds of evidence generally**

In denying the allegation that the utility billed complainant for summer usage in the winter and winter usage in the summer, the Commission relied upon the records of the utility which indicated both bills in question having overlapped both summer and winter usage time periods and were thus appropriately billed.

§6. Weight, effect and sufficiency**§19. Records and books of utilities**

Based in part on a recorded phone call with the utility's customer service which included the complainant acknowledging the due date, the Commission determined the disputed due date of an initial payment for a payment plan.

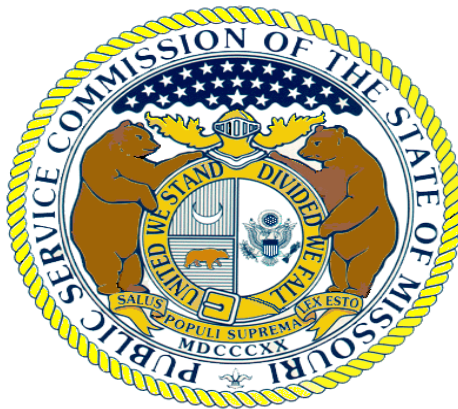
§22. Parties**§24. Procedures, evidence and proof**

The Commission found that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule, tariff, or order of the Commission.

§26. Burden of proof

The Commission found that in a complaint case, the burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the complainant.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Brett Felber,

Complainant,

v.

Union Electric Company d/b/a Ameren
Missouri,

Respondent.

File No. EC-2023-0395

REPORT AND ORDER

Issue Date: November 29, 2023

Effective Date: December 29, 2023

APPEARANCES**Appearing For Brett Felber:**

Brett Felber, 316 Sonderen Street, O'Fallon, Missouri 63366

Appearing for Union Electric Company d/b/a Ameren Missouri:

Eric Banks, Attorney, Banks Law LLC, 1824 Chouteau Avenue, St. Louis, Missouri 63103

Jermaine Grubbs, Corporate Counsel, 1901 Chouteau Avenue, St. Louis, Missouri 63103

Appearing for the Staff of the Missouri Public Service Commission:

Jeff Keevil, Deputy Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: John T. Clark

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Brett Felber,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2023-0395</u>
	)	
Union Electric Company d/b/a Ameren	)	
Missouri,	)	
	)	
Respondent.	)	

REPORT AND ORDER

The Missouri Public Service Commission, having considered the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Any failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission did not consider relevant evidence, but indicates rather that omitted material is not dispositive of this decision.

I. Procedural History

Complainant, Brett Felber, filed a formal complaint with the Public Service Commission against Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) on May 23, 2023.¹ Mr Felber alleges that Ameren Missouri failed to follow protocols when it discontinued service to his address, that Ameren Missouri inaccurately billed his account for service, that Ameren Missouri customer service mistreated him, and that

¹ All dates are 2023 unless otherwise specified.

Ameren Missouri impersonated a government entity in its caller ID displayed on Mr. Felber's cell phone.² His complaint states that the amount at issue is \$10,485.00. The Commission addresses this complaint pursuant to Commission Rule, 20 CSR 4240-2.070(4), concerning formal complaints.

Throughout the course of this complaint, and even after the evidentiary hearing was completed, Mr. Felber alleged an array of additional violations he believed Ameren Missouri committed against him. These include failure by Ameren Missouri to consider a medical hardship in relation to his service disconnection, failure to remove amounts discharged previously in Mr. Felber's bankruptcy proceedings, disconnecting his service on a Friday, property damage, unauthorized use of his credit/debit card, and failure to honor a payment agreement due date. Allegations made after the close of evidence were not considered in this order.

On May 25, the Commission issued notice of the complaint under Chapter 536 of the Revised Statutes of Missouri (RSMo) and directed Ameren Missouri to file an answer to the complaint by June 26. The Commission, by separate order, directed the Staff of the Commission (Staff) to file its report on this complaint by July 24.

Mr. Felber's wife, Lisa Lambert, filed an application to intervene as the General Managing Business Partner of Capital Property Investors LLC and Dividend Park Investors LLC on May 25. The Commission issued a notice of deficiency informing Lisa Lambert that Commission Rule 20 CSR 4240-2.040(5), requires pleadings filed with the Commission to be signed by an attorney authorized to practice law in Missouri unless the entity signing the pleading is a natural person acting solely on their own behalf and

² Mr. Felber's complaint evolved to encompass additional matters discussed elsewhere in this order.

representing only themselves.³ Because the entities seeking to intervene were limited liability companies and not a private individual the application was deficient. That deficiency was never remedied and Capital Property Investors LLC and Dividend Park Investors LLC's application to intervene is denied.

Lisa Lambert later filed an application to personally intervene in this complaint. The Commission issued a notice of deficiency concerning that application to intervene because she failed to include her street or mailing address. This deficiency was never remedied and Lisa Lambert's application to intervene is denied. Lisa Lambert did participate in the evidentiary hearing as a witness for Mr. Felber.

On June 14, the Commission issued its *Notice of Amended Complaint*, which directed Ameren Missouri to answer Mr. Felber's additional allegations. Ameren Missouri filed its *Confidential Answer and Affirmative Defenses* on June 26.

On July 24, Staff submitted its report and memorandum. Staff's report concluded that Mr. Felber identified no clear violations of applicable statutes, Commission rules or regulations, or Commission-approved tariffs by Ameren Missouri. However, Staff also stated that whether a violation occurred depended on the Commission's findings concerning specific evidence.

On July 31, the Commission issued its *Order Establishing Procedural Schedule*. At Mr. Felber's request, the Commission agreed to hold the evidentiary hearing by videoconference. The Commission established a discovery deadline of August 15 and set an evidentiary hearing for August 30.

³ See also *Clark v. Austin*, 340 Mo 467, 101 S.W. 2d 977 (Mo 1937); *Reed v. Labor and Indus. Relations Com'n*, 789 S.W.2d 19 (Mo 1990).

After a discovery dispute delayed the production of information between the parties, the Commission rescheduled the evidentiary hearing for October 6.

On October 6 and October 10, the Commission conducted an evidentiary hearing via WebEx videoconference. During the evidentiary hearing, the Commission admitted the testimony of six witnesses and received 42 exhibits into evidence. In addition to his own testimony, Mr. Felber presented testimony from witnesses Lisa Lambert, and Mr. Felber's son and daughter. Ameren Missouri presented witness Aubrey Krcmar, Regulatory Liaison. Staff presented witness Sarah Fontaine, Senior Research/Data Analyst with the Commission's Customer Experience Department. In addition, the Commission took official notice of Ameren Missouri's tariffs in effect as of the relevant time periods in this case.⁴ The Commission also took official notice of Commission File No. EC-2019-0121.⁵

Summary Determination

On August 6, Mr. Felber filed a *Motion for Summary Judgment*. The Commission treated Mr. Felber's motion as a motion for summary determination under the Commission's rules governing summary determination.⁶

Ameren Missouri filed a *Response in Opposition to Motion for Summary Judgment* on August 10. Ameren Missouri noted that under Commission Rule 20 CSR 4240-2.117(1)(A), a motion for summary determination shall not be filed less than 60 days prior to an evidentiary hearing except by leave of the Commission, which Mr. Felber did not

⁴ Ameren Missouri Tariff, MO PSC No. 6, with emphasis on 2nd Revised Sheet No. 144.

⁵ Mr. Felber's previous formal complaint where he alleged Ameren Missouri had overbilled him.

⁶ Commission Rule 20 CSR 4240-2.117, Summary Disposition.

request.⁷ Ameren Missouri also noted other deficiencies in Mr. Felber's motion and attached memorandum. Nevertheless, during the August 30 prehearing conference the Regulatory Judge directed Ameren Missouri to file an answer to the motion for summary determination by September 11.

Ameren Missouri timely filed an answer. Ameren Missouri's answer asserted that a material issue in this complaint involved the due date for a down payment on a payment agreement. Mr. Felber asserts that a down payment was not due until May 22, while Ameren Missouri asserts that the down payment was due May 18.

The procedures regarding summary determination before the Commission are established by Commission Rule 20 CSR 4240-2.117.1. Subsection (E) of that rule provides that the Commission:

may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to **any material fact**, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.⁸

Mr. Felber, as the party requesting summary determination, has the burden of establishing a right to judgment as a matter of law.⁹ Facts contained in affidavits or otherwise in support of a party's motion are to be accepted as true unless they are contradicted by the response to the motion for summary determination.¹⁰ Only genuine disputes as to material facts preclude summary determination.¹¹

⁷ Mr. Felber filed his motion for summary determination 24 days before the August 30 evidentiary hearing, prior to that hearing being rescheduled.

⁸ Emphasis added.

⁹ *Wilmes v. Consumers Oil Co. of Maryville*, 473 S.W. 3d 705, 714 (Mo. App. W.D. 2015).

¹⁰ *Allen v. Continental Western Ins. Co.* 436 S.W.3d 548, 551 (Mo. banc 2014).

¹¹ *Id.*

Ameren Missouri and Mr. Felber disagree about the due date Mr. Felber was to make a down payment to activate a payment agreement. Therefore, a genuine issue to a material fact in this complaint exists and the Commission cannot grant Mr. Felber's request for summary determination.

After the hearing on October 14, Mr. Felber filed a Motion for Summary Judgment or Disposition, which the Commission will again treat as a motion for summary determination. Ameren Missouri filed a response in opposition to the motion and Mr. Felber replied to Ameren Missouri's response.

The Commission will not address the content of this motion because it fails to comply with Commission's rules governing summary determination. The motion merely recites why Mr. Felber believes he should prevail on his complaint and Ameren Missouri should not prevail. The Commission will deny this motion as untimely, deficient, and made after the close of evidence in this case. Mr. Felber's summary determination motions are denied.

Motions for Restoration of Electric Service

Mr. Felber also made numerous requests for restoration of his electric service during the pendency of these proceedings and after the evidentiary hearing. Almost all of Mr. Felber's filings end with a demand that the Commission order restoration of his electric service or that Ameren Missouri immediately restore service. The Commission will not individually address all of these requests, but the Commission will address some of the more prominent requests.

On May 25, Mr. Felber filed an *Emergency Petition* for restoration of electric service. Mr. Felber's motion, like this complaint, alleged that Ameren Missouri failed to

follow procedures for contacting a customer prior to disconnection. The petition also stated that Ameren Missouri “knowingly stalled, deceived customer in an attempt to stall the process of submitting formal complaints and failed to appropriately respond to complaints.” Mr. Felber’s motion was not specific about how Ameren Missouri stalled or deceived him about submitting a formal complaint. The motion reiterates his original complaint’s claims that no call was made on May 16 prior to disconnection, which Mr. Felber states violates Ameren Missouri tariff MO PSC NO 6, Sheet 144(1).

Mr. Felber filed another request for emergency restoration of services on May 30. That motion also argued Ameren violated Ameren Missouri tariff MO PSC NO 6, Sheet 144(1). Additionally, that motion argued that Ameren Missouri violated the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act because, on his phone, Ameren Missouri’s caller ID displayed as “Boone Cnty Govt,” instead of Ameren Missouri. This act applies to the Federal Communications Commission and does not concern proceedings before the Missouri Public Service Commission.

On May 31, Ameren Missouri filed a response to Mr. Felber’s May 25 motion and suggestions in opposition to his petition for emergency restoration of electric service. Ameren Missouri stated the Complainant has the burden of proving Ameren Missouri violated the law or its tariff. Ameren Missouri argued that “It would be an abuse of discretion for the Commission to order the restoration of Complainant’s services before Ameren Missouri has had an opportunity to prove that it followed the Commission’s rules and regulations, as well as its tariffs, when it disconnected Complainant’s electric service.”

On June 7, Ameren Missouri responded to Mr. Felber’s May 30 request for emergency restoration of electric service. Ameren Missouri again asserted that the

Commission had not yet had an opportunity to make a determination, and that Ameren Missouri had until June 26 to answer Mr. Felber's complaint.

Also, on June 7, Mr. Felber filed another motion for emergency restoration of services. That motion argues that the Commission could order a restoration of electric service where Ameren Missouri "purposely, with the purpose and intent to neglect, purposely with the intent to deceive, stalls the process of rights to the complainant, in attempts to evade responding and fails to restore electric services." As before, Mr. Felber cites Ameren Missouri's tariff sheet number 144 and also cites Section 575.140 RSMo., a section that does not currently exist, but would be housed under Title XXXVIII Crimes and Punishment; Peace Officers and Public Defenders. This title involves Missouri criminal law, and does not concern proceedings before the Missouri Public Service Commission.

On June 14, the Commission issued an order denying Mr. Felber's May 25 and 30 requests for emergency restoration of electric service. The Commission's order stated:

No citation of law was given in either the May 25 Petition or the May 30 Request to support Mr. Felber's argument that the Commission has the authority to order Ameren Missouri to restore electrical service immediately, without requiring Mr. Felber to meet the burden of proving his allegations, or allowing Ameren Missouri to answer the complaint or raise any affirmative defenses.

Mr. Felber filed additional motions for restoration of electric service on June 22, June 23, June 25, July 27, August 30, September 15, September 17, September 19, September 23, and October 5. Mr. Felber also filed motions for restoration of electric service after the evidentiary hearing on October 10, October 13, October 23, November 1, November 8, and November 13. The motions filed prior to the evidentiary hearing sought restoration of service without the Commission making a decision based upon

properly admitted evidence. Instead, such a decision would have required the Commission to determine that Mr. Felber's statements or interpretations of unadmitted evidence were factually correct. Mr. Felber's motions after the evidentiary hearing were either based on his interpretation of evidence offered during the hearing, which would be more appropriate in a post-hearing brief, or upon events that occurred after the evidentiary hearing and, therefore, after the close of evidence in this case. Accordingly, the Commission will deny Mr. Felber's additional motions for restoration of electric service.

Mr. Felber also requested restoration of electric service in numerous other pleadings. Those requests were usually at the end of pleadings asserting that he was being victimized by Ameren Missouri, that Ameren Missouri and its counsel were dishonest or abusing their power, and that if services were not restored he would be forced to file a lawsuit, complaint, or criminal action with another agency or court against Ameren Missouri and/or the Commission. Those requests for restoration of service would circumvent an evidentiary hearing and deny Ameren Missouri due process. Therefore, the Commission will deny Mr. Felber's other requests for restoration of electric service.

Confidential Information

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Felber's bills and past due amounts because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. Felber's customer specific information. Mr. Felber agreed to waive such information at the evidentiary

hearing.¹² The confidential information disclosed in this Report and Order is the minimal amount necessary to support the decision.

II. Findings of Fact

1. Ameren Missouri is a utility regulated by this Commission.
2. Mr. Felber received electrical service from Ameren Missouri at a residence in Florissant, Missouri (Florissant Residence).¹³

2023 Payment Agreements and Notices

3. Mr. Felber has not made a payment on his Ameren Missouri account since at least 2022 that was not returned for insufficient funds.¹⁴
4. On January 4, Ameren Missouri sent a notice to Mr. Felber that electric service at the Florissant Residence would be disconnected (all such notices are referred to as a “disconnect notice”) with a due date of January 16.¹⁵
5. There are different types of Ameren Missouri payment agreements that customers can enter into depending upon their circumstances. This order addresses payment agreements that Ameren Missouri internally refers to as Cold Weather Rule Payment Agreements and Non-Cold Weather Rule Payment Agreements.¹⁶ A Cold

¹² Transcript, Vol. 6, Pages 14-15.

¹³ Exhibit 101, Formal Complaint.

¹⁴ Transcript, Vol. 6, Page 277, and Exhibit 106C, Staff Data Request 0004, Payment History. Mr. Felber and Ameren Missouri disagree about when the last payment was made with Ameren Missouri stating that it last received an unreturned payment in February 2022, and Mr. Felber stating that his June 2022 payment was not returned. The evidence was not sufficient for the Commission to determine which date in 2022, but the exact date is not material to the Commission’s decision.

¹⁵ Exhibit 102, Ameren Missouri Field Notes.

¹⁶ Transcript, Vol. 7, page 64.

Weather Rule Payment Agreement is a payment agreement¹⁷ entered into pursuant to the Commission's Cold Weather Rule.¹⁸

6. A pending payment agreement is an agreement whereby a customer agrees to make a down payment, and once that payment is made the customer is entered into a payment agreement with the terms established.¹⁹

7. A pending payment agreement must be set up prior to disconnection.²⁰

8. On January 16, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$681.00 down payment due January 30. \$3,570.44 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted January 31.²¹

9. On February 2, a disconnect notice was sent to Mr. Felber with a due date of February 14.²²

10. On February 14, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$701.00 down payment due February 14. \$3,712.10 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted February 15.²³

¹⁷ Commission Rule 20 CSR 4240-13.015(1), defined a payment agreement as a payment plan entered into by a customer and a utility

¹⁸ Commission Rule 20 CSR 4240-13.055, Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather.

¹⁹ Transcript, Vol. 7, Page 80.

²⁰ Transcript, Vol. 7, Page 68.

²¹ Exhibit 102, Ameren Missouri Field Notes.

²² Exhibit 102, Ameren Missouri Field Notes.

²³ Exhibit 102, Ameren Missouri Field Notes.

11. On February 15, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$701.00 down payment due February 15. \$3,712.10 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted February 16.

12. On February 20, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$701.00 down payment due February 28. \$3,712.10 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted March 1.²⁴

13. On March 6, a disconnect notice was sent to Mr. Felber with a due date of March 16.²⁵

14. On March 20, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$721.00 down payment due March 20. \$3,852.77 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted March 21.

15. On March 21, a Cold Weather Rule pending payment agreement was established for Mr. Felber's account with a \$721.00 down payment due March 29. \$3,852.77 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted March 30.²⁶

16. On April 3, a disconnect notice was sent to Mr. Felber with a due date of April 13.²⁷

²⁴ Exhibit 102, Ameren Missouri Field Notes.

²⁵ Exhibit 102, Ameren Missouri Field Notes.

²⁶ Exhibit 102, Ameren Missouri Field Notes.

²⁷ Exhibit 102, Ameren Missouri Field Notes.

17. On April 6, a payment extension for \$4,573.77 was activated by Ameren Missouri extending the payment due date to April 24. That payment extension defaulted for non-payment on April 24.²⁸

18. On April 25, a telephone call within 24 hours of disconnection (24 hour disconnect call) was made to Mr. Felber.²⁹

19. On April 25, Mr. Felber contacted Ameren Missouri. Mr. Felber was upset because he claimed the call he received showed up in his caller ID as “Boone County Government.” After being transferred to a supervisor Mr. Felber informed Ameren Missouri that he would be contacting the Attorney General.³⁰

20. On April 25, Mr. Felber disputed his past due balance with Ameren Missouri.³¹

21. On April 25, a Non-Cold Weather Rule pending payment agreement was established for Mr. Felber’s account with a \$2,397.00 down payment due April 27. \$2,397.85 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted April 28.³²

22. On April 28, a pending payment agreement was established for Mr. Felber’s account with a \$2,397.00 down payment due April 28. \$2,397.85 was deferred to be paid

²⁸ Exhibit 102, Ameren Missouri Field Notes.

²⁹ Exhibit 102, Ameren Missouri Field Notes.

³⁰ Exhibit 102, Ameren Missouri Field Notes.

³¹ Exhibit 102, Ameren Missouri Field Notes.

³² Exhibit 102, Ameren Missouri Field Notes.

over 12 monthly installments. No down payment was made and that pending agreement was defaulted April 29.³³

23. On April 29, a pending payment agreement was established for Mr. Felber's account with a \$2,397.00 down payment due May 1. \$2,397.85 was deferred to be paid over 12 monthly installments. No down payment was made and that pending agreement was defaulted May 2.³⁴

24. On May 4, a disconnect notice was sent to Mr. Felber with a due date of May 16, in the amount of \$4,725.06 (10-day notice). That notice informed Mr. Felber that his service could be disconnected after May 16 for failure to pay a past due balance.³⁵

25. Mr. Felber was signed up to receive courtesy text alerts.³⁶

26. On May 5, a text message was sent to Mr. Felber informing him of the pending disconnection and that the minimum amount of \$4,725.06 was due by May 16. Mr. Felber was signed up to receive email alerts in Ameren Missouri's billing system.³⁷

27. On May 5, Mr. Felber emailed Ameren Employee, Terri Engelbrecht, about Ameren Missouri showing up in his caller ID as Boone County Government. Ameren Missouri's records indicate that after an investigation it was determined that Message Broadband, the automated call provider, sends the number to the carrier and the carrier adds the name from a database.³⁸

³³ Exhibit 102, Ameren Missouri Field Notes.

³⁴ Exhibit 102, Ameren Missouri Field Notes.

³⁵ Exhibit 102, Ameren Missouri Field Notes, and Exhibit 113, Data Request No. MPSC 0015, and Exhibit 125, Disconnection notice.

³⁶ Transcript, Vol. 7, Pages 26-27.

³⁷ Exhibit 113, Data Request No. MPSC 0015.

³⁸ Exhibit 102, Ameren Missouri Field Notes.

28. On May 15, Ameren Missouri activated a payment extension for Mr. Felber's account for \$4,725.06 with an extension due date of May 17. That payment extension defaulted for non-payment on May 17.³⁹

29. On May 16, Ameren Missouri made two automated calls to Mr. Felber that reached an answering machine (two call attempts 2-9 days prior to disconnection).⁴⁰

30. When Mr. Felber contacted Ameren Missouri to set up a payment agreement, it was prior to his service disconnection on May 19.⁴¹

31. The Florissant Residence is equipped with an Automated Metering Infrastructure (AMI) meter.⁴²

32. Ameren Missouri has a variance from the Commission's notification requirements for its AMI metered customers. As part of that variance Ameren Missouri does not have to knock on a customer's door prior to disconnecting service. Because disconnection of service can be done remotely, Ameren Missouri must make a 24-hour disconnect call prior to disconnection.⁴³

33. On May 18, Ameren Missouri sent a text message to Mr. Felber informing him of the pending disconnection.⁴⁴

34. On May 18, a 24 hour disconnect call was made to Mr. Felber. That call was answered by a person, not a recording (Disconnect call less than 24 hours from

³⁹ Exhibit 102, Ameren Missouri Field Notes.

⁴⁰ Exhibit 102, Ameren Missouri Field Notes, and Exhibit 113, Data Request No. MPSC 0015.

⁴¹ Transcript, Vol. 6, Page 201.

⁴² Transcript, Vol. 7, Pages 46-47.

⁴³ Transcript, Vol. 7, Pages 125-126.

⁴⁴ Exhibit 200, Staff Report and Memorandum.

disconnection).⁴⁵ Mr. Felber had actual notice of the pending disconnection at the Florissant Residence.

35. On May 18, Mr. Felber called Ameren Missouri to set up a payment agreement. Mr. Felber was informed that for an initial payment he would have to pay \$2,509 that would be due that day, May 18. Mr. Felber acknowledged that he understood by saying “Okay, that’s fine.”⁴⁶

36. On May 18, a pending payment agreement was established for Mr. Felber’s account with a down payment due May 18. No down payment was made and that pending agreement was defaulted May 19.⁴⁷ Mr. Felber was informed that he would receive confirmation of the May 18 payment agreement by mail. Mr. Felber was also asked if he would like to receive confirmation by email and he indicated he would like an email copy.⁴⁸

37. Mr. Felber has extensive experience with Ameren Missouri’s payment agreements. When asked how many payment agreements he has previously had, Mr. Felber answered, “Plenty, plus cold weather rule agreements”.⁴⁹

38. Ameren Missouri’s records show that Mr. Felber only made the initial payment to activate previous Ameren Missouri payment agreements six times. None of those previous agreements required a down payment over \$400 and one of the agreements required a down payment of \$0.⁵⁰

⁴⁵ Exhibit 102, Ameren Missouri Field Notes, and Exhibit 113, Data Request No. MPSC 0015.

⁴⁶ Transcript Vol. 6, Page 56, and Exhibit 200A, Audio recording of May 18, 2023 customer service call.

⁴⁷ Exhibit 102, Ameren Missouri Field Notes.

⁴⁸ Exhibit 200A, Audio recording of May 18, 2023 customer service call.

⁴⁹ Transcript, Vol 6, Page 200.

⁵⁰ Exhibit 108, Data Request MPSC 0005, Payment plans from June 2018 to date.

39. It is unknown how many pending payment agreements Mr. Felber has previously had.

40. On Friday, May 19, Ameren Missouri disconnected electrical service to the Florissant Residence.⁵¹

41. On May 19, after service to his property was disconnected, Mr. Felber initiated an informal complaint with the Commission by contacting the Commission's Consumer Services Department.⁵²

42. On May 19, Mr. Felber told the Commission's Consumer Services Department that under a payment agreement with Ameren Missouri he had agreed to pay approximately \$2,500 on May 19, but Ameren Missouri claimed the amount was due May 18. Mr. Felber also claimed that Ameren Missouri was "spoofing" calls and was showing as Boone County Government in his caller ID.⁵³

43. On May 23, Mr. Felber initiated this formal complaint with the Commission.⁵⁴

44. Mr. Felber has dual sim cards in his phone and can receive calls on that phone for both his business line and his personal line.⁵⁵

45. Mr. Felber provided screen shots of his personal calls as well as computer screen shots of his T-Mobile for Business incoming and outgoing calls. The call logs purportedly cover the dates of May 1-18. Mr. Felber offers this as evidence that he did not receive the required disconnection notice calls from Ameren Missouri. The phone

⁵¹ Transcript, Vol. 6, Page 56, and Exhibit 102C, Ameren Missouri Field Notes.

⁵² Transcript, Vol. 6, Page 212.

⁵³ Exhibit 200, Staff Report and Memorandum.

⁵⁴ Transcript, Vol. 6, Page 213.

⁵⁵ Transcript, Vol. 6, Page 28.

numbers are not completely visible on the T-Mobile business screen shots (only the area code and first number).

May 18 Pending Payment Agreement Required Payment Due Date

46. On June 20, Mr. Felber filed a document alleging that Ameren Missouri sent him a confirmation email on May 18, showing that a payment agreement was entered into which included a down payment of \$2,509.00 to be paid by May 22.⁵⁶ Prior to his June 20 filing, Mr. Felber had not alleged that he had an agreement with a May 22 due date and it was not part of his original complaint.⁵⁷

47. Mr. Felber states that he discovered the email when going through his past emails.⁵⁸

48. If a customer requests an email confirmation of a pending payment agreement, Ameren Missouri sends a courtesy email as soon as the pending payment agreement is set up.⁵⁹

49. The language used in Ameren Missouri's the courtesy emails is not in dispute. That language states:

Your payment agreement has been established.

A payment agreement has been established for your Ameren Missouri account ending in _____. Your required payment of _____ is due by _____ in order to activate this agreement.

(This is followed by details of the agreement including the deferred amount, the required payment, the required payment due date, the number of installments, and the installment amount.)

⁵⁶ Exhibit 200, Staff Report and Memorandum.

⁵⁷ Exhibit 101, Formal Complaint.

⁵⁸ Transcript, Vol. 6, Page 54.

⁵⁹ Transcript, Vol. 7, Page 53.

Your account will be updated when the required payment has been received. Failure to pay the full required payment by the due date may result in disconnection of service.

Once the agreement is activated, the monthly installment amount will be included in your total amount due each month. A confirmation letter will be mailed to you for your records.

Please note, late, partial, or missed payments will result in cancellation of the agreement, at which time the entire remaining balance of your agreement will become due immediately.⁶⁰

50. Ameren Missouri employs a vendor, SendGrid, to send email confirmations of pending payment agreements. Ameren Missouri, via SendGrid, sent a pending payment agreement to Mr. Felber on May 18.⁶¹

51. Ameren Missouri was unable to produce a copy of the pending payment agreement because SendGrid only retains copies of emails for 30 days.⁶²

52. Mr. Felber submitted a copy of an Ameren Missouri confirmation email he states he received from Twilio, a company that Mr. Felber says is the parent company for SendGrid. That pending payment agreement in that email bears a May 22 required payment due date. Below the Ameren Missouri confirmation email is a highlighted correspondence with a Nigel purporting to be with team Twilio support. No last name is provided for Nigel. The email twice indicates that if the provider or other party wants to obtain the document data, they must follow the guidelines contained in the terms and conditions. The correspondence also addresses watermarks. These statements may be in response to a correspondence from Mr. Felber, but that response was not included,

⁶⁰ Exhibit 8, Payment agreement courtesy email.

⁶¹ Exhibit 200D, Data Request MPSC 0027, Pending payment agreement email dispatch information.

⁶² Exhibit 200D, Data Request MPSC 0027, Pending payment agreement email dispatch information.

and the email does not appear to be a reply email. The Commission does not find this exhibit credible.⁶³

53. Ameren Missouri's records indicate that the courtesy email sent to Mr. Felber on May 18, contained a May 18 payment date and not a May 22 payment date.⁶⁴

Friday AMI Meter Disconnection

54. Mr. Felber has an AMI meter installed at the Florissant Residence. The meter was installed March 8, 2021. AMI meters allow for remote reconnection to occur on a weekend.⁶⁵

55. Ameren Missouri performs disconnections of customer service on Fridays.⁶⁶

56. Pursuant to the Commission's rules, Ameren Missouri cannot disconnect service on a day when utility personnel are not available to reconnect service.⁶⁷

57. Ameren Missouri has utility personnel available on weekends. If an AMI meter could not be reconnected remotely utility personnel would be available to reconnect service.⁶⁸

Service in Wife's Name

58. Lisa Lambert called Ameren Missouri to establish service in her name at the Florissant Residence on May 19.⁶⁹

⁶³ Exhibit 11, Twilio email to Mr. Felber concerning courtesy email.

⁶⁴ Exhibit 200D, Data Request MPSC 0027, Pending payment agreement email dispatch information.

⁶⁵ Exhibit 200, Staff Report and Memorandum.

⁶⁶ Transcript, Vol. 7, Pages 89-90.

⁶⁷ Transcript, Vol. 7, Page 88, and Commission Rule 20 CSR 4240-13.050.

⁶⁸ Transcript, Vol. 7, Page 88.

⁶⁹ Exhibit 104F, Recording of Lisa Lambert call.

59. Lisa Lambert stated at the evidentiary hearing that she had just moved back onto the property on May 19, and Mr. Felber was going to move out.⁷⁰

60. After Ameren Missouri requested a lease, Lisa Lambert faxed a lease agreement made with her in-laws (Mr. Felber's parents) to Ameren Missouri on May 19.⁷¹

61. Lisa Lambert has co-operated businesses with Mr. Felber at the Florissant Residence since at least 2022.⁷² Lisa Lambert and the business she co-operated with Mr. Felber received the benefit of electric service provided at the Florissant Residence under Mr. Felber's Ameren Missouri account.

62. Lisa Lambert testified that she stayed at the Florissant Residence occasionally when she and Mr. Felber were trying to reconcile.⁷³ Lisa Lambert received the benefit of electric service provided at the Florissant Residence under Mr. Felber's Ameren Missouri account.

63. Ameren Missouri did not allow Lisa Lambert to establish electric service in her name at the Florissant Residence.⁷⁴

Medical Hardship Extension

64. A medical hardship allows for an approximately 30-day extension from having service disconnected or reconnection if the medical hardship paperwork is received within 24 hours of disconnection.⁷⁵

⁷⁰ Transcript, Vol. 6, Pages 244-245.

⁷¹ Transcript, Vol. 6, Pages 244-245, and Exhibit 104F, Recording of Lisa Lambert call.

⁷² Transcript, Vol. 6, Page 245.

⁷³ Transcript, Vol. 6, Page 244.

⁷⁴ Exhibit 200, Staff Report and Memorandum.

⁷⁵ Exhibit 118, Data Request MPSC 0026, Medical hardship extension.

65. Pursuant to Ameren Missouri's policies a request for a medical hardship extension must be received directly from the customer's doctor, on their letterhead, and must be faxed to Ameren Missouri. A medical hardship must be received within 24 hours of disconnection to be considered for an extension or reconnection.⁷⁶

66. The disconnection notice sent to Mr. Felber on May 4, contained language explaining where on Ameren Missouri's website information about a medical hardship extension was located.⁷⁷

67. Ameren Missouri's records indicate that Mr. Felber did not apply for a medical hardship extension.⁷⁸

68. Mr. Felber refused to provide medical hardship documentation to Ameren Missouri during the complaint discovery process.⁷⁹

69. Mr. Felber produced a copy of an email to Ameren Missouri employee Terri Engelbrecht from March 16, stating that he would like to submit paperwork for a medical hardship. The email does not indicate that there is an attachment, and there was no indication that the medical hardship paperwork was submitted.⁸⁰

70. Mr. Felber contacted Ameren Missouri about a medical hardship on May 22.⁸¹

⁷⁶ Transcript, Vol. 7, Page 52.

⁷⁷ Exhibit 125, Disconnection notice.

⁷⁸ Exhibit 118, Data Request MPSC 0026, Medical hardship extension.

⁷⁹ Transcript, Vol 6, Page 195.

⁸⁰ Exhibit 16, Mr. Felber's email to Terri Engelbrecht.

⁸¹ Transcript, Vol. 6, Pages 233-234.

71. Ameren Missouri did not consider Mr. Felber's request for a medical hardship extension because the paperwork received from Mr. Felber's doctor was received in excess of 24 hours after his service was disconnected.⁸²

Bankruptcy

72. Mr. Felber filed for Bankruptcy in 2018.⁸³

73. On June 9, Mr. Felber filed a one-page document in the Commission's Electronic Filing and Information System (EFIS) from the United States Bankruptcy Court titled Discharge of Debtor(s) bearing a date of September 5, 2018. That document is incomplete and shows no debtors or amounts that were discharged in bankruptcy.⁸⁴

74. Ameren Missouri's records show that it discharged \$699.39 of debt from Mr. Felber's bankruptcy that was owed to Ameren Missouri for Mr. Felber at the Florissant Residence.⁸⁵

75. In June 2018, Mr. Felber's current Ameren Missouri account was created. That account started with a zero balance, and no balances were transferred from any previous accounts associated with Mr. Felber.⁸⁶

76. None of the past due amounts at issue in this case include any amounts discharged in Mr. Felber's bankruptcy.⁸⁷

⁸² Transcript, Vol. 7, Page 52.

⁸³ Transcript, Vol. 6, Page 108.

⁸⁴ Exhibit 200, Staff Report and Memorandum, and Exhibit 200 E, single page of bankruptcy order.

⁸⁵ Exhibit 200F, Data Request MPSC 0009, Ameren Missouri amounts discharged in bankruptcy.

⁸⁶ Exhibit 200, Staff Report and Memorandum, and Exhibit 112, Data Request MPSC 0014, No amounts discharged in bankruptcy.

⁸⁷ Transcript, Vol. 7, Page 31.

Credit/Debit Card Usage

77. On May 23 the Florissant Residence was set up for automatic payments with Ameren Missouri through online account access using a mobile device.⁸⁸

78. On May 25, two separate logins were made to Mr. Felber's Ameren Account through a mobile device. Two attempts to make \$2,500.00 payments using a credit/debit card were made. Both attempts failed.⁸⁹

79. Mr. Felber stated at the evidentiary hearing that under the advice of outside legal counsel, he would not discuss the credit card allegation because a police report was filed.⁹⁰ No attorney has entered an appearance for Mr. Felber in this proceeding.

Customer Service

80. Mr. Felber stated that he was called a liar by Ameren Missouri customer service numerous times.⁹¹

81. Mr. Felber's daughter testified that she heard him have conversations on speakerphone where Mr. Felber was called a liar and hung up on.⁹²

82. Mr. Felber's wife stated that she did not think Mr. Felber had been called a liar, but could not be certain.⁹³ She later responded that there were instances where Ameren Missouri customer service was rude, hung up on Mr. Felber and called him a liar.⁹⁴

⁸⁸ Exhibit 115, Data Request MPSC 0023, Auto pay setup and attempted payments.

⁸⁹ Exhibit 115, Data Request MPSC 0023, Auto pay setup and attempted payments.

⁹⁰ Transcript, Vol. 6, Page 150.

⁹¹ Transcript, Vol. 6, Page 139.

⁹² Transcript, Vol. 6, Page 218.

⁹³ Transcript, Vol. 6, Page 238.

⁹⁴ Transcript, Vol. 6, Page 243.

83. All calls between Ameren Missouri customer service Customer Care Advisors and leaders are recorded and saved on Ameren Missouri's system in the regular course of business.⁹⁵ None of the audio recordings played at the evidentiary hearing or submitted into evidence contained instances of Mr. Felber being treated rudely or being called a liar.

84. Ameren Missouri's witness, Aubrey Krcmar, credibly testified that she compiled and listened to Ameren Missouri's recorded calls and there were no instances where Mr. Felber was called a liar. Ms. Krcmar noted that there were several instances where the call center representative disconnected the call after advising Mr. Felber that there was nothing else that they could assist with and that the call was not productive.⁹⁶

Disputed Balances

85. According to Ameren Missouri's policies, if a customer disputes an Ameren Missouri bill prior to disconnection, Ameren Missouri suspends the charges so that disconnection does not occur or remove the account from collections.⁹⁷

86. Mr. Felber disputed his bill on November 7, 2018 as part of a formal complaint with the Commission.⁹⁸

87. Mr. Felber disputed his total balance on October 8, 2020. The total balance was suspended pending an informal complaint with the Commission.⁹⁹

⁹⁵ Transcript, Vol. 6, Page 253.

⁹⁶ Transcript, Vol. 6, Pages 263-264.

⁹⁷ Transcript, Vol. 7, Page 32.

⁹⁸ Transcript, Vol. 7, Page 32, Exhibit 114, Data Request MPSC 0022, Billing disputes, and Commission File No. EC-2019-0121.

⁹⁹ Transcript, Vol. 7, Pages 32-33, and Exhibit 114, Data Request MPSC 0022, Billing disputes.

88. On April 14, 2022, Mr. Felber contacted Ameren Missouri's legal and regulatory departments with an intent to sue letter claiming that Ameren Missouri had not applied a payment to his account. Ameren Missouri was unable to locate the payment Mr. Felber claimed to have made.¹⁰⁰

89. On July 15, 2022, Mr. Felber contacted Ameren Missouri regulatory personnel and advised that he had filed a complaint with the Missouri Attorney General's Office. Ameren Missouri suspended the charges to ensure that Mr. Felber was not disconnected while disputing his balance with the Attorney General's Office.¹⁰¹

90. On September 26, 2022, Mr. Felber emailed Ameren Missouri's legal and regulatory departments an intent to sue letter. Ameren Missouri suspended charges on Mr. Felber's account while he investigated whether to dispute those charges.¹⁰²

91. On April 25, 2023, a 24 hour disconnect call was made to Mr. Felber.¹⁰³

92. Mr. Felber disputed his entire balance in an April 25, phone call with Ameren Missouri. At that time Mr. Felber claimed that the due date for his initial payment on a pending payment agreement was April 26 and not April 24. Ameren Missouri voided the disconnection and investigated the dispute.¹⁰⁴

93. Ameren Missouri's policy is that a billing dispute must be received prior to disconnection to avoid a service interruption.¹⁰⁵

¹⁰⁰ Transcript, Vol. 7, Page 33, and Exhibit 114, Data Request MPSC 0022, Billing disputes.

¹⁰¹ Transcript, Vol. 7, Page 33, and Exhibit 114, Data Request MPSC 0022, Billing disputes.

¹⁰² Transcript, Vol. 7, Pages 33-34, and Exhibit 114, Data Request MPSC 0022, Billing disputes.

¹⁰³ Exhibit 102, Ameren Missouri Field Notes.

¹⁰⁴ Exhibit 200, Staff Report and Memorandum.

¹⁰⁵ Transcript, Vol. 7, Page 34.

94. Mr. Felber setup a pending payment agreement on May 18, whereby he made arrangements to pay an initial payment equal to half is past due balance, with the remaining balance to be paid over 12 months.¹⁰⁶ Mr. Felber was not disputing his balance on May 18, prior to being disconnected on May 19.

Utility Bills

95. Mr. Felber claimed to have utility bills from Ameren Missouri that charged him incorrectly for electric usage.¹⁰⁷ Mr. Felber asserts that these bills are inaccurate because Ameren Missouri does not bill for summer usage during the winter.¹⁰⁸ Mr. Felber also alleged winter usage billed during the summer.¹⁰⁹

96. Mr. Felber produced two bills at the evidentiary hearing he stated showed that Ameren Missouri was billing him incorrectly. One bill was from July 29, 2022, and the Other bill was from November 29, 2022. Those bills displayed both summer and winter usage.¹¹⁰

97. The July 29, 2022, utility bill showed that Mr. Felber was billed for service from May 27, 2022, through June 28, 2022. Mr. Felber was billed for summer and winter usage rates on that bill.¹¹¹

¹⁰⁶ Exhibit 200A, Audio recording of May 18, 2023 customer service call.

¹⁰⁷ Transcript, Vol. 6, Page 75.

¹⁰⁸ Transcript, Vol. 6, Page 93.

¹⁰⁹ Transcript, Vol. 7, Page 116.

¹¹⁰ Exhibit 19, Ameren Missouri utility bills.

¹¹¹ Exhibit 19, Ameren Missouri utility bills.

98. The November 29, 2022, utility bill showed that Mr. Felber was billed for service from September 27, 2022, through October 26, 2022. Mr. Felber was billed for summer and winter usage rates on that bill.¹¹²

99. Ameren Missouri's summer rates are in effect from June 1 through September 30, and winter rates are in effect from October 1 through May 31.¹¹³ Mr. Felber's bills contained usage for both summer and winter because the two bills he presented each straddled the change in seasonal rates.¹¹⁴

Ameren Employees Identification

100. Mr. Felber produced photographs to show that Ameren Missouri employees were near the Florissant Residence without Ameren Missouri identification. Both employees are pictured wearing hardhats and work vests. Ameren Missouri identification cannot be seen in the photos. The photos show the employees at a distance and at a limited number of angles.¹¹⁵

III. Conclusions of Law

A. Ameren Missouri is a public utility as defined by Section 386.020(43), RSMo. Furthermore, Ameren Missouri is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

¹¹² Exhibit 19, Ameren Missouri utility bills.

¹¹³ Transcript, Vol. 7, Page 125

¹¹⁴ Exhibit 19, Ameren Missouri utility bills.

¹¹⁵ Exhibits 6 and 7, Photographs of Ameren Missouri employees and vehicles.

B. Section 386.390 RSMo, provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule, tariff, or order of the Commission.

C. Commission Rule 20 CSR 4240-13.050(6) regarding disputed amounts and disconnection states:

(6) A utility shall maintain an accurate record of the date of mailing or delivery. A notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6) that is currently the subject of a dispute pending with the utility or complaint before the Commission, nor shall such a notice be issued as to any bill or portion of a bill which is the subject of a settlement agreement except after breach of a settlement agreement, unless the utility inadvertently issues the notice, in which case the utility shall take necessary steps to withdraw or cancel this notice.

D. Commission Rule 20 CSR 4240-13.050, concerning discontinuance of service states:

(3) On the date specified on the notice of discontinuance or within thirty (30) calendar days after that, and subject to the requirements of these rules, a utility may discontinue service to a residential customer between the hours of 8:00 a.m. and 4:00 p.m. Service shall not be discontinued on a day when utility personnel are not available to reconnect the customer's service, or on a day immediately preceding such a day. After the thirty (30) calendar day effective period of the notice, all notice procedures required by this rule shall again be followed before the utility may discontinue service

E. Commission Rule 20 CSR 4240-13.035(2)(B) regarding Denial of service states:

2) A utility shall not refuse to commence service to an applicant for any of the following reasons:

B) Failure to pay the bill of another customer, unless the applicant who is seeking service received substantial benefit and use of the service to that customer, or unless the applicant is the legal guarantor for a delinquent bill. In this instance, the utility refusing to commence service, shall have the burden of proof to show that the applicant received substantial benefit and use of the service, or that the applicant is the legal guarantor, provided that such burden shall not apply if the applicant refuses to cooperate in providing or obtaining information the

applicant has or should have regarding the applicant's residence history. To meet that burden the utility must have reliable evidence that—

1. The applicant and that customer resided together at the premises where the bill was incurred and during the period the bill was incurred; and
2. The bill was incurred within the last seven (7) years; and
3. The utility has attempted to collect the unpaid bill from the customer of record; and
4. At the time of the applicant(s) request for service, the bill remains unpaid and not in dispute.

F. The stipulation and agreement in Commission File No. EE-2019-0382, approved by the Commission on July 22, 2020, contains a provision for Enhanced Disconnection Notice Communications schedule. The table below sets out the notices that Ameren Missouri is to provide to non-Medical Equipment Registry customers prior to disconnection.

Days Before Disconnection	Communication
10 days before	Written notice provided via US Mail
2-9 days before	Text and/or Email Alert Outbound Automated Call Attempt #1 Outbound Automated Call Attempt #2
24 hours before	Outbound Automated Call Attempt #3

G. Ameren Missouri electric service tariff, MO PSC No. 6, 2nd Revised Sheet No. 144, was approved by the Commission on February 8, 2021, and became effective February 19, 2021. The tariff sheet is slightly different than the approved stipulation and agreement in File No. EE-2019-0382 because it does not contain the requirement that certain contacts take place within the two to nine days prior to disconnection. That tariff sheet states in part:

General Rules and Regulations

VII. Disconnection and Reconnection of Service Continued

Residential Customer Contact and Notice of Disconnection

1. Where an operational AMI remote disconnect is present:

At least 24 hours preceding disconnection of service, the Company will attempt to contact a residential customer through a series of communications to advise of the pending action and what steps must be taken to avoid disconnection. Such communications will include not less than two (2) call attempts and an additional notice via the customer's elected preferred communication method. A final call attempt will be made within 24 hours of the discontinuance of service.

Any third-party notifications established by customer will also receive the same notice and communication attempts.

(This section reflects a variance from Rule 20 CSR 4240-13.050(9), Rule 20 CSR 4240-13.055(3)(C), and Rule 20 CSR 4240-13.055(3)(D) granted by Commission in File No. EE-2019-0382.)

H. Commission approved tariffs have the same force and effect as statutes.¹¹⁶

I. Commission Rule 20 CSR 4240-13.060 regarding Settlement Agreements and Payment Agreements states:

(1) When a utility and a customer arrive at a mutually satisfactory settlement of any dispute or the customer does not dispute liability to the utility but claims inability to pay the outstanding bill in full, a utility and the customer may enter into a settlement agreement. A settlement agreement which extends beyond ninety (90) days shall be in writing and mailed or otherwise delivered to the customer.

(2) Every payment agreement resulting from the customer's inability to pay the outstanding bill in full shall provide that service will not be discontinued if the

¹¹⁶ *A.C. Jacobs and Company v. Union Electric Company*, 17 S.W.3d 579, 581 (Mo. App. 2000); *State ex rel. St. Louis County Gas Co. v. Public Service Commission of Missouri*, 286 S.W. 84, 86, (Mo. 1926); *Wheelock v. Walsh Fire Clay Products Co.*, 60 F.2d 415 (8th Circuit 1932); *Updike Grain Co. v. Chicago & N.W. Ry. Co.*, 35 F.2d 486 (8th Circuit 1929); *Chicago, R. I. & P. R. Co. v. Furniture Forwarders of St. . . .*, 267 F.Supp. 175 (D.C. Mo. 1967).

customer pays the amount of the outstanding bill specified in the agreement and agrees to pay a reasonable portion of the remaining outstanding balance in installments until the bill is paid. For purposes of determining reasonableness, the parties shall consider the following: the size of the delinquent account, the customer's ability to pay, the customer's payment history, the time that the debt has been outstanding, the reasons why the debt has been outstanding, and any other relevant factors relating to the customer's service. Such a payment agreement shall not exceed twelve (12) months duration, unless the customer and utility agree to a longer period.

(3) If a customer fails to comply with the terms and conditions of a settlement agreement, a utility may discontinue service after notifying the customer in writing by personal service or first class mail in accordance with 4 CSR 240-13.050—that the customer is in default of the settlement agreement; the nature of the default; that unless full payment of all balances due is made, the utility will discontinue service; and the date upon or after which service will be discontinued.

J. Section 386.430 RSMo., concerning burden of proof states:

In all trials, actions, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

K. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with Mr. Felber.¹¹⁷

IV. Decision

Mr. Felber's complaint alleges that Ameren Missouri did not provide notice prior to disconnecting his electrical service as required by Ameren Missouri tariff sheet No. 144. Mr. Felber also alleges that Ameren Missouri failed to follow a payment agreement giving him until May 22, to make an initial payment under a payment agreement emailed to him.

¹¹⁷ In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"..."the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

He further alleges that disconnecting his service on a Friday violates the Commission's rules on when a customer can be disconnected, that Ameren Missouri failed to consider a timely requested medical hardship waiver, that Ameren Missouri customer service called him a liar and hung up on him, and that Ameren Missouri was still billing him for past due amounts discharged in bankruptcy. Mr. Felber also alleges that Ameren Missouri did not allow his wife to establish service in her name at the Florissant Residence in violation of the Commission's rules.

Mr. Felber's complaint states that the amount at issue is \$10,485.00. Mr. Felber says that amount includes punitive damages as well as damages for property, hotel (and other) expenditures, and loss of income.¹¹⁸ The Commission cannot grant a relief in equity or award punitive damages.¹¹⁹

This limitation on the Commission authority also means the Commission cannot grant Mr. Felber relief for the allegations that Ameren Missouri damaged his property and that Ameren Missouri attempted to use his credit/debit card without his permission. However, evidence indicates that Ameren Missouri did not attempt to use Mr. Felber's credit/debit card without permission.

Notice Prior to Disconnection

Mr. Felber alleges that Ameren Missouri failed to follow proper protocols prior to disconnecting his service. He complains that Ameren Missouri did not call him prior to disconnection. Mr. Felber believes that Ameren Missouri violated its tariff sheet MO PSC Schedule No. 6, Sheet No. 144, concerning Residential Customer Contact and Notice of

¹¹⁸ Exhibit 101, Formal Complaint.

¹¹⁹ *State ex rel. GS Technologies Operating Co. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 696 (Mo. Ct. App. W.D. 2003).

Disconnection. That tariff sheet requires Ameren Missouri to initiate a series of communications at least 24 hours prior to disconnection of service. Ameren Missouri must make at least two attempts to call the customer and an additional contact by the customer's preferred communication method. Ameren Missouri must make a final call attempt within 24 hours of disconnection.

Ameren Missouri's tariff contains a variance from Commission Rules 20 CSR 4240-13.050(9), 20 CSR 4240-13.055(3)(C), and 20 CSR 4240-13.055(3)(D). That variance was granted in File No. EE-2019-0382 when the Commission approved a stipulation and agreement setting out the terms of that variance. The evidence on the record indicates that while Ameren Missouri complied with the terms of its tariff, it did not fully comply with the notice of disconnection requirements contained in the File No. EE-2019-0382 stipulation and agreement.

That stipulation and agreement requires that two to nine days prior to disconnection Ameren Missouri send a text or email alert and make two outbound automated call attempts. Ameren Missouri's tariff is slightly different than the stipulation and agreement, because the tariff does not contain the two to nine-day requirement for the two call attempts and a text/email notification.

Mr. Felber was signed up to receive courtesy text alerts. Ameren Missouri witness Aubrey Krcmar's testimony and Ameren Missouri's response to Staff's data request No. MPSC 0015¹²⁰ show that on May 5, a text message was sent to Mr. Felber informing him of the pending disconnection and that the minimum amount of \$4,725.06 was due by May 16. On May 16, Ameren Missouri made two calls to Mr. Felber using its vendor Message

¹²⁰ Exhibit 113, Data Request No. MPSC 0015.

Broadcast. Both calls reached an automated answering system. Staff's Report and Memorandum shows that a text message informing Mr. Felber of the pending disconnection was sent on May 18. Neither the May 5 nor the May 18 text messages were within the two to nine day window contained in the Commission approved stipulation and agreement. Therefore, the Commission finds that Ameren Missouri failed to comply with the terms of its Commission approved stipulation and agreement from File No. EE-2019-0382.

However, this minor violation does not mean that Mr. Felber was unaware of a pending disconnection. Within 24 hours of disconnection, Ameren Missouri must make a final call attempt to inform the customer of the pending disconnection. On May 18, Ameren Missouri made a 24 hour disconnect call to Mr. Felber and received a live answer. Thus, even though Ameren Missouri's numerous prior attempts to notify Mr. Felber were not all within the exact timeframes contained in the Commission-approved stipulation and agreement, Mr. Felber had actual notice of the impending service disconnection. Actual notice is further demonstrated by Mr. Felber's attempt to set up a payment agreement to avoid disconnection.

May 18 Pending Payment Agreement Required Payment Due Date

Mr. Felber asserts that Ameren Missouri sent him a payment agreement with a May 22 due date for a required payment. Mr. Felber argues that Ameren Missouri violated its payment agreement when it disconnected his service on May 19, prior to the May 22 payment due date. This claim was not part of Mr. Felber's original complaint. This claim did not arise until June 20, when Mr. Felber filed a copy of a pending payment agreement bearing a May 22 due date for a required payment. Ameren Missouri asserts that the

courtesy confirmation email sent to Mr. Felber was not a payment agreement, but a pending payment agreement. Ameren Missouri also states that the due date for the required initial payment was May 18, and not May 22. Because Mr. Felber did not include this allegation in his original complaint, it appears that Mr. Felber first discovered the email with the May 22 payment due date closer to the June 20 time of filing it with the Commission. Thus, the Commission is not persuaded by Mr. Felber's argument that he had until May 22 instead of May 18 to make an initial payment. His argument is also undercut by the recorded conversation on the May 18 call with Ameren Missouri customer service, where Mr. Felber called to set up a payment agreement--where Mr. Felber acknowledged that he had to make the required \$2,509.00 payment that day.

Ameren Missouri could not obtain a copy of its courtesy email to Mr. Felber due to its vendor, SendGrid, not retaining these emails after 30 days. However, Ameren Missouri's records show that a May 18 due date was entered into its system on May 18. The email exhibit provided by Mr. Felber is an image file, which Mr. Felber states was done to avoid tampering, but better evidence would have been to produce the original email, a print off of the email, or a forwarded email. Mr. Felber did not. Mr. Felber states that he received a copy of the courtesy email from Twilio, SendGrid's parent company. The email from Twilio that Mr. Felber produced does not contain the correspondence leading up to the email, and Mr. Felber did not include any other correspondence with Twilio. The individual that responds to Mr. Felber does not include his last name or other contact information for himself.

The Commission finds that the initial payment due date was May 18 and was not May 22. The Commission also finds that Mr. Felber has not met his burden to show that

he was unaware that his initial payment was due on May 18 or he would be subject to disconnection. The Commission also finds that Mr. Felber has not met his burden to show that Ameren Missouri disconnected his service prior to the initial payment due date. Further, the Commission does not find that Mr. Felber has met his burden to show that the May 22 due date is the correct date for the required initial payment.

Mr. Felber also asserts that the courtesy email is a payment agreement and not a pending payment agreement as Ameren Missouri asserts. Mr. Felber relies on language in the courtesy email that states: “Your payment agreement has been established” and “A payment agreement has been established for your Ameren Missouri account” to support this proposition. However, the rest of the email states that his required payment of \$2,509.00 is due to activate the agreement, that his account will be updated when the required payment is received, and that once the agreement is activated the monthly installment amount will be added to his monthly total amount.

The Commission agrees with its Staff that Ameren Missouri should examine the language of its pending payment agreement, which has some contradictory and confusing language. Ameren Missouri also acknowledges that it will examine this language. However, the courtesy email informs the recipient that an initial payment is due to *activate* the agreement. The Commission finds that the courtesy email is a pending payment agreement and not a payment agreement. In addition to knowing that he had to pay an initial payment on May 18, given that Mr. Felber had at least nine pending payment agreements with Ameren Missouri in 2023 prior to the May 18 pending payment agreement. Mr. Felber has sufficient prior experience with payment agreements to know

that the agreement does not become effective unless he timely makes that initial payment.

Commission Rule 20 CSR 4240-13.060, concerning settlement and payment agreements, requires that the utility notify the customer prior to disconnection by personal service or first class mail prior to discontinuing service, if the customer fails to comply with the terms of a payment agreement. Mr. Felber did not make the initial payment to activate the agreement. As there was no active payment agreement, there was no requirement that Ameren Missouri mail Mr. Felber a notice that he had defaulted on an agreement prior to disconnecting service.

Friday AMI Meter Disconnection

Mr. Felber asserts that Ameren Missouri could not lawfully disconnect his service on a Friday, because under Commission Rule 20 CSR 4240-15.050(3), "Service shall not be discontinued on a day when utility personnel are not available to reconnect the customer's service, or on a day immediately preceding such a day." Mr. Felber argues that the language has not been updated for AMI meters and therefore is inapplicable. This rule does not discuss meters whatsoever, and is therefore applicable no matter what kind of meter a customer possesses. Ameren Missouri can connect and disconnect Mr. Felber's meter remotely, and could therefore reconnect his service on a Friday or weekend if necessary. Ameren Missouri also maintains staff on weekends to reconnect service if it cannot be remotely reconnected.

Service in Wife's Name

Ameren Missouri did not establish service for Mr. Felber's wife, Lisa Lambert, at the Florissant Residence on May 19, after service was disconnected. Mr. Felber states that

this violates the Commission's Rule 20 CSR 4240-13.035(2)(B) regarding Denial of service. This Complaint would more appropriately be Lisa Lambert's, but she did not file a complaint. Mr. Felber claims that he had moved out and was living elsewhere separate from his wife. The Commission does not find this credible. Mr. Felber and his wife were both at the Florissant Residence prior to, and after, service disconnection. Lisa Lambert testified that she was part of a business that was headquartered at the Florissant Residence, and that she was only occasionally there prior to disconnection. The Commission does not find this credible. The Commission finds the timing of Lisa Lambert's attempt to change service to be related to the disconnection and not because her husband had moved. Further, the Commission finds that Lisa Lambert received a substantial benefit from the electric service provided at the Florissant Residence prior to disconnection.

Medical Hardship Extension

Mr. Felber claims that he filed the necessary paperwork for a medical hardship extension. Not only did Mr. Felber refuse to provide this information to Ameren Missouri during the discovery process, Mr. Felber also provided no evidence at the evidentiary hearing that he had a doctor fax the information to Ameren Missouri prior to disconnection. Mr. Felber's one piece of reliable evidence concerning a medical hardship was an email he sent to an Ameren Employee asking about submitting paperwork. Mr. Felber provided evidence that medical hardship paperwork was faxed to Ameren Missouri, but it was done more than 24 hours after he was disconnected. Because it was not sent prior to disconnection, pursuant to their policy, Ameren Missouri did not consider it. The

Commission finds that Mr. Felber did not timely apply for a medical hardship extension or reconnection.

Bankruptcy

Mr. Felber claims that Ameren Missouri did not remove amounts discharged in bankruptcy. However, Mr. Felber failed to produce a judgment showing what was discharged in his 2018 bankruptcy. Mr. Felber provided only the first page of the judgment, which was essentially a cover page and provided no discharged amounts. Ameren Missouri discharged \$699.39 from Mr. Felber's account. Ameren Missouri started Mr. Felber's current account with a zero balance and transferred no other balances to that account. The Commission finds that Ameren Missouri did not fail to discharge amounts from Mr. Felber's 2018 bankruptcy.

Customer Service

Mr. Felber claims that customer service was rude to him, called him a liar on multiple occasions, and hung up on him. Mr. Felber's daughter supports his contention. His wife stated both that she did and did not hear him called a liar on speakerphone.

Evidence of record shows that Ameren Missouri records all of its customer service calls. Ameren Missouri's witness, Aubrey Krcmar, listened to all the recorded calls and credibly testified that at no point was Mr. Felber called a liar and calls were only discontinued after they became unproductive. The customer service calls played at the evidentiary hearing all demonstrated appropriate customer service behavior. The only person who was rude or threatening on calls in evidence was Mr. Felber. The Commission finds that Ameren Missouri customer service behaved appropriately at all relevant times when talking with Mr. Felber.

Disputed Balances

Mr. Felber claims that Ameren Missouri incorrectly billed him for summer usage in the winter, and winter usage in the summer. Mr. Felber provided two bills as evidence of Ameren Missouri's incorrect billing. However, both bills overlap both summer and winter usage time periods and thus would appropriately bill for both. The Commission does not find that Ameren Missouri incorrectly billed Mr. Felber.

Conclusion

At its core this complaint is reasonably straight-forward. Mr. Felber managed to accrue a past due amount of approximately \$5,000 for electricity that he used and that benefitted him and his family. Mr. Felber was able to go for substantial lengths of time without paying anything toward that balance. Mr. Felber does not dispute that he has made no payments for electricity in 2023.

Mr. Felber employed a variety of strategies to avoid payment of his past due amount. Mr. Felber frames his service disconnection as a series of violations by Ameren Missouri related leading to an unlawful disconnection of his service. However, the history of Mr. Felber's account leading to that disconnection tells a more complete story. Mr. Felber followed a pattern outlined in the findings of fact that when facing the imminent disconnection of electric service, he would contact Ameren Missouri to establish a payment agreement, an extension, or to lodge a complaint or dispute with Ameren Missouri to secure additional time. He repeatedly set up pending payment agreements, and repeatedly failed to pay the required amount to activate those payment agreements. Mr. Felber has extensive experience with Ameren Missouri's pending payment agreements and knows exactly how those agreements work and what is required. Mr.

Felber has a total of six prior payment agreements where he paid the required initial payment to activate the agreement, and an unknown number prior pending payment agreements where he failed to pay that initial payment. Mr. Felber knew that his initial payment to activate a payment agreement was due the day the pending payment agreement was made. A number of times in 2023, Ameren Missouri would allow him to set up pending payment agreement immediately after failing to pay the required initial payment on another pending payment agreement.

Mr. Felber argues that his electric service should be reconnected without payment because notice of his pending disconnection was deficient. The Commission requires multiple notices because the Commission wants to be sure that nobody is disconnected without receiving actual notice of disconnection. Mr. Felber is acutely aware of the status of his account with Ameren Missouri. Mr. Felber was aware that his power could be disconnected after May 16, and received actual 24-hour notice that his services would be disconnected on May 19. Mr. Felber proactively tried to prevent the disconnection by trying to set up a payment agreement.

A deficiency in one of Ameren Missouri's notices does not entitle Mr. Felber to a "do over" because Mr. Felber knew his account status, knew he was subject to disconnection, and knew when he could be disconnected. Mr. Felber's contention that his electrical service should be reconnected without payment is contrary to law. Mr. Felber, like all Ameren Missouri customers, must pay for his utility service in accordance with Ameren Missouri's effective tariffs under the filed rate doctrine.¹²¹

¹²¹ *Brooks v. Empire Dist Elec. Co.*, 420 S.W.3d 586, 592 (Mo. Ct. App. S.D. 2013).

After applying the facts to its conclusions of law, the Commission has reached the following decision. Mr. Felber had the burden to show that Ameren Missouri violated a law, rule, or order of the Commission that is within the Commission's statutory authority to determine. Mr. Felber has failed to meet his burden of proof as to most of his allegations. The Commission does find that Ameren Missouri failed to provide text messages within the two to nine days required in its approved stipulation and agreement. Ameren Missouri provided text message notification 10 days prior to when service to the Florissant Residence could be disconnected, and again one day prior to actual disconnection. Neither of those contacts is within the two to nine days required by the stipulation and agreement approved in File No. EE-2019-0382. The Commission will direct Ameren Missouri to review its notice language and procedures and explain the results of that review to Staff during its next general rate case proceeding. However, the Commission found that Mr. Felber received actual notice prior to his disconnection and was aware that the disconnection was imminent. Therefore, the Commission finds that Ameren Missouri's violation caused no harm in this instance and does not require that Ameren Missouri reconnect electricity to the Florissant Residence without payment. The Commission will deny Mr. Felber's complaint.

Any applications for rehearing must be filed prior to the date this order becomes effective. If the Commission denies an application for rehearing, the party filing the request for rehearing may appeal the Commission's decision as provided by Missouri statutes.

THE COMMISSION ORDERS THAT:

1. Mr. Felber's complaint is denied.

2. Mr. Felber's motions for summary determination are denied.
3. Ameren Missouri is directed to review its disconnection, pending payment agreement, and payment agreement notice language. Ameren Missouri is further directed to examine its notice procedures to make sure that it is following the terms contained in the stipulation and agreement approved in File No. EE-2019-0382. Ameren Missouri shall make sure that it sends the required notices at the required time, and not merely approximate. Ameren Missouri shall explain the results of its review and any actions taken to clarify its procedures to Staff during its next general rate case proceeding.
4. Ameren Missouri may proceed, consistent with the law and the Commission's rules, with Mr. Felber's account as appropriate.
5. Any relief not specifically granted is denied.
6. Any outstanding motions filed prior to the close of evidence are denied.
7. Mr. Felber's requests for restoration of electric service are denied.
8. This order shall become effective on December 29, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes) **File No. EO-2022-0040**
the Issuance of Securitized Utility Tariff)
Bonds for Qualified Extraordinary Costs)

In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes) **File No. EO-2022-0193**
the Issuance of Securitized Utility Tariff)
Bonds for Energy Transition Costs Related)
to the Asbury Plant)

ORDER NUNC PRO TUNC

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§24. Procedures, evidence and proof

§27. Finality and conclusiveness

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 29th day of November,
2023.

In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes)
the Issuance of Securitized Utility Tariff)
Bonds for Qualified Extraordinary Costs)

File No. EO-2022-0040

In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes)
the Issuance of Securitized Utility Tariff)
Bonds for Energy Transition Costs Related)
to the Asbury Plant)

File No. EO-2022-0193

ORDER NUNC PRO TUNC

Issue Date: November 29, 2023

Effective Date: November 29, 2023

On November 17, 2023, The Empire District Electric Company d/b/a Liberty filed a motion requesting an order nunc pro tunc to correct an internal inconsistency in the Commission's *Amended Report and Order*. An ordered paragraph in the *Amended Report and Order* is not consistent with the Commission's finding of fact 222¹ concerning how partial payments are addressed. Therefore, page 126, ordered paragraph nine, of the *Amended Report and Order* where it stated:

. . . If there is a partial payment of an amount billed, the amount paid must first be allocated first between the indenture trustee and Liberty based on

¹ The Commission's Amended Report and Order, finding of fact 222 states: If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, unless a customer is in a repayment plan under the Commission's Cold Weather Rule, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

the ratio of the billed amount for the securitized utility tariff charge to the total billed amount, excluding any late fees, and second, any remaining portion of the payment must be allocated to late fees.

is hereby corrected to read:

. . . If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, unless a customer is in a repayment plan under the Commission's Cold Weather Rule, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

THE COMMISSION ORDERS THAT:

1. The *Amended Report and Order* issued September 22, 2022, is corrected nunc pro tunc as set forth in the body of this order and in the *Nunc Pro Tunc Amended Report and Order* attached to this order.
2. This order shall be effective when issued.



BY THE COMMISSION

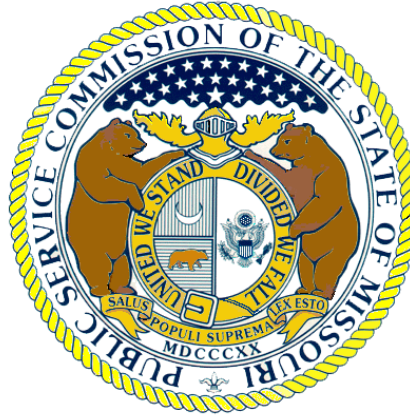
A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes)
the Issuance of Securitized Utility Tariff)
Bonds for Qualified Extraordinary Costs)

File No. EO-2022-0040

In the Matter of the Petition of The Empire)
District Electric Company d/b/a Liberty to)
Obtain a Financing Order that Authorizes)
the Issuance of Securitized Utility Tariff)
Bonds for Energy Transition Costs Related)
to the Asbury Plant)

File No. EO-2022-0193

NUNC PRO TUNC AMENDED REPORT AND ORDER*

Issue Date: September 22, 2022

Effective Date: October 2, 2022

* On March 20, 2023, the Missouri Court of Appeals for the Western District granted the Commission leave to correct its *Amended Report and Order nunc pro tunc*. That correction on page 122 of this order is described in the Commission's March 29, 2023, *Order Nunc Pro Tunc*.

On November 29, 2023, the Commission corrected its *Amended Report and Order nunc pro tunc*. That correction on page 126 of this order is described in the Commission's November 29, 2023, *Order Nunc Pro Tunc*.

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FINANCING ORDER

Procedural History

On January 19, 2022,¹ The Empire District Electric Company d/b/a Liberty (Liberty) filed a verified petition for financing order seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Liberty during the anomalous weather event of February 2021 commonly known as Winter Storm Uri. That petition was assigned Commission File No. EO-2022-0040.

Similarly, on March 21, Liberty filed a verified petition for financing order seeking authority to issue securitized utility tariff bonds to recover energy transition costs associated with retirement of Liberty's Asbury coal-fired generating plant. That petition was assigned Commission File No. EO-2022-0193.

Liberty filed a motion on April 18, asking the Commission to consolidate the two cases for all purposes. The Commission responded on April 27 with an order consolidating the two cases for purposes of the hearing and procedural schedule, but reserving the question of whether to issue one financing order for both cases, or to issue a separate financing order for each case.

The Midwest Energy Consumers' Group (MECG) was allowed to intervene in both cases. Renew Missouri Advocates d/b/a Renew Missouri (Renew Missouri) was allowed to intervene in EO-2022-0193, but did not apply to intervene in EO-2022-0040.

The parties prefiled direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on June 13 through June 16. The parties filed post-hearing briefs on July 13, and reply briefs on July 20.²

¹ At dates refer to 2022, unless otherwise indicated.

² The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

The Commission issued its Report and Order on August 18, 2022, to be effective on August 28, 2022. Liberty, Public Counsel, and Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively Evergy) filed timely applications for rehearing. In addition, Union Electric Company d/b/a Ameren Missouri filed an *amicus curiae* brief advocating for a correction in the order. Staff responded to Liberty, Evergy, and Ameren Missouri, and Liberty responded to Public Counsel on September 8, 2022.

After reviewing the filings of the parties, the Commission has decided that one aspect of its Report and Order must be amended. The calculated total of Liberty's energy transition costs related to the retirement of its Asbury electrical generating plant is described in the decision section of issue 1 B of the August 18 order as \$81,241,471. The correct total, based on the decisions embodied in the order, is \$82,921,331. That figure is corrected in this order. That is the only substantive change being made in this order.

This Amended Report and Order will be effective in ten days. If anyone believes that rehearing, reconsideration, or clarification is needed, they must file a new or renewed application for rehearing, reconsideration, or clarification before the effective date of this order.

Description of Securitization

Findings of Fact

1. Securitization is a financing technique in which certain assets are legally isolated within a special purpose entity. Investors then purchase securities that represent either debt or equity interest in the special purpose entity.³

³ Niehaus Direct, Ex. 18, Page 2, Lines 17-20.

2. The special purpose entity will issue bonds backed primarily by a statutory and regulatory right to receive a charge to be paid by a utility's customers. The securitized bonds are non-recourse to and bankruptcy remote from any operating company, in this case, Liberty.⁴

3. Securitization is a process authorized for the first time in Missouri by the legislature in the 2021 general legislative session.⁵

4. As authorized by the securitization statute, Liberty seeks authority from the Commission to create one or more wholly-owned special purpose entities, which will be incorporated as Delaware limited-liability companies with Liberty as the sole member. The special purpose entity, or entities, will serve as the issuer of the bonds. Liberty will then create and sell the right to impose, bill, and receive Securitized Utility Tariff Charges to the special purpose entities as issuer of the bonds. The special purpose entities will pay Liberty for the right to impose, bill, and receive the Securitized Utility Tariff Charges by issuing bonds, thereby acquiring all of Liberty's right, title, and interest to collect the Securitized Utility Tariff Charges from Liberty's ratepayers.⁶

5. The goal of securitization is to structure the securities in a way that will allow them to achieve the highest bond rating possible. That will allow the issuer to set the price for those bonds at the lowest interest rate possible, thus saving ratepayers money compared to the amount they would have to pay if a traditional method of financing, at a higher interest rate, were used.⁷

⁴ Niehaus Direct, Ex. 18, Page 3, Lines 2-3.

⁵ HB 734, Section 393.1700, RSMo, effective August 28, 2021.

⁶ Niehaus Direct, Ex. 18, Page 8, Lines 12-20.

⁷ DeCoursey Direct, Ex. 5, Page 6, Lines 7-13.

Conclusions of Law

A. Liberty is an electric corporation as defined in Section 386.020(15), RSMo 2016.

B. Section 393.1700.2(1) allows an electrical corporation, which includes Liberty, to petition the Commission for a financing order to allow for issuance of “securitized utility tariff bonds” to finance “energy transition costs.”

C. “Energy transition costs” are defined by Section 393.1700.1(7) as including all of the following:

(a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;

(b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electrical generating facility occurring before August 28, 2021;

D. Liberty sought to securitize “energy transition costs” associated with the retirement of its Asbury coal-fired electric generating plant in its petition in File No. EO-2022-0193.

E. Section 393.1700.2(2) allows an electrical corporation, which includes Liberty, to petition the Commission for a financing order to allow for issuance of “securitized utility tariff bonds” to finance “qualified extraordinary costs.”

F. “Qualified extraordinary costs” are defined Section 393.1700.1(13) as:

Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events;

G. Liberty sought to securitize “qualified extraordinary costs” associated with the anomalous weather event of February 2021, known as Winter Storm Uri, in its petition in File No. EO-2022-0040.

Should the Commission issue separate financing orders for Liberty’s petition for securitization of energy transition costs and its petition for securitization of qualified extraordinary costs? Or should it issue a combined financing order for the two petitions?

This issue was not identified by the parties. Rather it was raised by the Commission in deciding that the two petitions filed by Liberty would not be consolidated for all purposes.

Findings of Fact

6. Larger utility securitization issuances tend to benefit from improved investor marketability and secondary liquidity, which can support lower pricing of the issuance, resulting in lower costs for ratepayers.⁸

7. In addition, there are a number of transaction costs associated with the issuance of the securities that are fixed costs that do not vary with the amount being securitized. Issuing a single bond issue in a combined transaction would avoid duplication

⁸ Davis Rebuttal, Ex. 107, Page 9, Lines 20-21. See also, Ex. 24 and Transcript, Vol. 7, Page 530, Lines 12-18.

of those fixed costs.⁹ Avoiding the duplication of those fixed transaction costs could save over \$1 million in transaction costs.¹⁰

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

Given the likelihood of increased costs that would result from separate securitizations, the Commission will issue a single financing order regarding both energy transition costs and qualified extraordinary costs.

The Issues

The securitization statute¹¹ mandates that the Commission's order regarding the petitions for securitization authority include certain findings and other provisions. This order will meet all requirements of the statute. Not all of those requirements are contested. The order will first address the issues contested by the parties and then will address the additional statutory requirements that were not contested.

1) What amounts should the Commission authorize Liberty to finance using securitized utility tariff bonds?

Findings of Fact

This issue is simply a summation of all other issues identified in this order. As such there are no additional findings of fact applicable to this issue.

⁹ Transcript, Vol. 7, Page 530, Lines 5-12., *See also*, Ex. 24 and Davis Rebuttal, Ex. 107, Pages 9-10, Lines 22-23, 1-2.

¹⁰ Transcript, Vol. 7, Page 545, Lines 3-7. *See also*, Ex. 24.

¹¹ Section 393.1700, RSMo 2016

Conclusions of Law

H. Section 393.1700.2(3)k RSMo requires this securitization order to include:

“[a] statement specifying a future ratemaking process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers.

Decision

This amount is the sum of the amounts of qualified extraordinary costs determined in issue 1A and the amount of energy transition costs determined in issue 1B, plus the amount of upfront financing costs determined in issue 4. That total is \$290,382,903.

A) What amounts of qualified extraordinary costs should the Commission authorize Liberty to finance for Winter Storm Uri?

Findings of Fact

8. Between February 13 and 20, 2021, three severe winter storms struck portions of the United States. That winter weather event has been termed Winter Storm Uri. Much of the Midwest, including Liberty’s service area, experienced unseasonably cold temperatures, resulting in rolling electrical blackouts and extreme natural gas price spikes.¹²

9. During the peak price period of February 16 and 17, the price of natural gas escalated because of high demand and limited availability of natural gas due to production problems resulting from the extreme cold. Similarly, power prices for electricity with the Southwest Power Pool (SPP) also surged during Winter Storm Uri. SPP on-peak day ahead locational marginal prices for February 15 through 19 averaged 11,280 percent

¹² Olsen Direct, Ex. 9, Schedule JO-3, Page 6.

higher than the five-year average for the period, hitting \$3,821.05 per megawatt hour for February 18 delivery.¹³

10. During Winter Storm Uri, Liberty experienced natural gas pressure limitations that affected production at its natural gas-powered electrical production units.¹⁴

11. Liberty incurred approximately \$193 million in extraordinary fuel costs for service to Missouri customers arising from Winter Storm Uri.¹⁵ Liberty seeks to recover those extraordinary fuel costs as “Qualified Extraordinary Costs” under the securitization statute.

12. Recovery of those fuel costs under the six-month recovery period established in Liberty’s Fuel Adjustment Clause would create extreme customer rate impacts.¹⁶

13. In total, Liberty seeks authority to securitize \$221,645,532 for costs related to Winter Storm Uri. This amount includes approximately \$193,402,000 for fuel costs, \$24,169,000 for Carrying Costs, \$419,000 for Deferred Legal Costs, and \$3,655,000 for Upfront Costs.¹⁷

Conclusions of Law

I. Section 393.1700.1(13) defines “Qualified Extraordinary Costs as:

Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

¹³ Olsen Direct, Ex. 9, Schedule JO-3, Page 15.

¹⁴ Olsen Direct, Ex. 9, Schedule JO-3, Pages 27-35.

¹⁵ Doll Direct, Ex. 2, Page 13, Lines 4-6.

¹⁶ DeCoursey Direct, Ex. 5, Page 5, Lines 1-8.

¹⁷ Emery Surrebuttal, Ex. 8, Page 10, Figure CTE-2.

J. Section 393.1700.2(2), RSMo sets out the content that must be included in a utility's petition for a financing order to finance qualified extraordinary costs.

Decision¹⁸

The Commission finds that Liberty's cost in the amount of \$199,561,572 incurred by Liberty in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are "Qualified Extraordinary Costs" as defined in Section 393.1700.1(13), RSMo. The Commission further finds that Winter Storm Uri was an "anomalous weather event" within the meaning of that statutory definition.

B) What amounts of energy transition costs should the Commission authorize Liberty to finance for Asbury?

Findings of Fact

14. Asbury Unit 1 was a coal-fired Babcock & Wilcox cyclone steam generator that was commissioned in 1970. When it began operations, it had a nominal rating of 206 MW and sourced its coal onsite via mine mouth operation. In 1990, the plant was converted to use a blend of low-sulfur Wyoming coal and local bituminous coal¹⁹

15. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions. In 2014, the Asbury plant was retrofitted with an Air Quality Control System (AQCS) to comply with federal environmental regulations.²⁰

¹⁸ The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.

¹⁹ Landoll Direct, Ex. 13, Page 3, Lines 12-18.

²⁰ Landoll Direct, Ex. 13, Page 4, Lines 11-20.

16. Asbury was retired near the beginning of 2020, and decommissioning and dismantling of the plant is ongoing.²¹

17. Liberty seeks to recover \$140,774,376 in energy transition costs for Asbury.²²

Conclusions of Law

K. Section 393.1700.1(7) defines “Energy Transition Costs” as including all of the following:

- (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;
- (b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021.

L. Section 393.1700.2(1), RSMo sets out the content that must be included in a utility’s petition for a financing order to finance energy transition costs.

²¹ Landoll Direct, Ex. 13, Page 5, Lines 15-20.

²² Emery Surrebuttal, Ex. 8, Page 1, Lines 20-21.

Decision²³

The Commission finds that Liberty's energy transition costs related to the retirement of its Asbury electrical generating plant in the amount of \$82,921,331 may be financed using securitized utility tariff bonds and recovery of such is just and reasonable.

2) Winter Storm Uri

A) What amount of costs, if any, that Liberty is seeking to securitize would Liberty recover through customary ratemaking?

B) What is the appropriate method of customary ratemaking absent securitization?

C) Under RSMo 393.1700.2(2)(e), what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"? and

D) Should Liberty's recovery include more than 95% of fuel and purchased power costs?

These four sub-issues are interrelated and the Commission will address them together.

Findings of Fact

18. Liberty incurred approximately \$193 million in extraordinary fuel costs for its Missouri customers during Winter Storm Uri.²⁴

19. Absent securitization, Liberty would recover its fuel and purchased power costs through a combination of its general rates and the Fuel Adjustment Clause (FAC) which is established within its tariff.²⁵

20. Liberty's FAC does not allow the company to recover 100 percent of its fuel and purchased power costs. Rather, the FAC includes a 95/5 sharing mechanism by

²³ The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.

²⁴ Doll Direct, Ex. 2, Page 13, Lines 4-6.

²⁵ Mastrogiannis Rebuttal, Ex. 104, Pages 7-8, Lines 20-21, 1-2.

which the company is allowed to recover only 95 percent of its fuel and purchased power costs through the FAC.²⁶

21. The Commission included the 95/5 sharing mechanism in Liberty's FAC to provide the company an incentive to operate at an optimal efficiency while still providing the company an opportunity to earn a fair return on its investment.²⁷

22. The same sharing incentive would give Liberty an incentive to plan for and to efficiently manage extraordinary events that could lead to a request to securitize extraordinary fuel costs.²⁸

23. Because of the extraordinary amount of the fuel and purchased power costs associated with Winter Storm Uri, Liberty did not seek to recover those costs through its FAC. Instead, it requested an Accounting Authority Order (AAO) in Commission File No. EU-2021-0274, seeking recovery of the Winter Storm Uri related costs as well as the remaining five percent of those February 2021 fuel and purchased power costs, carrying costs and other storm related costs, including outside legal fees. Following the passage of the securitization statute, Liberty sought to recover those costs it would have deferred through the AAO through the securitization proposed in this case.²⁹ Liberty's request for an AAO remains pending before the Commission, but is being held in abeyance pending resolution of this case.³⁰

24. Under an AAO, the utility is allowed to defer extraordinary costs for possible recovery in a future rate case. The Commission could allow recovery under an

²⁶ Mastrogianis Rebuttal, Ex. 104, Page 8, Lines 2-18.

²⁷ Transcript, Vol. 3, Page 289, Lines 18-25.

²⁸ Mantle Rebuttal, Ex. 200, Page 29, Lines 13-16.

²⁹ Bolin Rebuttal, Ex. 102, Page 3, Lines 2-21.

³⁰ See, EU-2021-0274, Order Directing Filing, Issued April 4, 2022.

appropriate amortization period with the utility being allowed appropriate carrying costs during the period of amortization. Under these circumstances, Staff would likely recommend at least a ten-year amortization period, with carrying costs calculated at the company's long-term debt rate.³¹

25. If an AAO was established, Staff would not recommend deferral or recovery of the five percent of the utility's share of fuel and purchased power costs under the FAC. Staff contends it is appropriate to expect Liberty's shareholders to share in the financial impact of Winter Storm Uri.³²

Conclusions of Law

M. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs." That section also allows the Commission to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities." The 95/5 sharing provision in Liberty's FAC tariff is designed to provide such an incentive.

N. In its report and order that initially established Liberty's FAC, the Commission found that "a prudence review can be expected to evaluate the major decisions a utility makes. However, a utility makes thousands of small decisions every

³¹ Bolin Rebuttal, Ex. 102, Page 4, Lines 1-19.

³² Bolin Rebuttal, Ex. 102, Pages 4-5, Lines 20-23, 1-8.

hour regarding fuel, purchased power, and off-system sales. It is not practical to expect a prudence review to uncover and evaluate every one of those decisions.”³³

O. Commission Rule 20 CSR 4240-20.090(8)(A)2.A(XI) provides that extraordinary costs are not to be passed through the company’s FAC.

P. The securitization statute, Section 393.1700.2(3)(c) requires a financing order issued by the Commission to include all of the following elements:

- a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and a finding that recovery of such costs is just and reasonable and in the public interest*. The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;
- b. *A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.* Notwithstanding any provisions of this section to the contrary, in considering whether to find the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds; ...
(emphasis added)

There are two important provisions of this section of the statute that should be noted. First, the section explicitly requires the Commission to determine that the imposition and collection of the utility tariff charge that will result from the securitization of these costs will be just and reasonable and in the public interest. Second, in making its determination as to whether the securitization of these costs is just and reasonable and in the public

³³ *In the Matter of The Empire District Electric Company’s Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 17, Mo. P.S.C. 631, 667 (2008)

interest, the Commission is directed to compare the results of the securitization to the results of a recovery of those costs using traditional (non-securitization) methods.

Q. Liberty asserts that it has a general right to recover all prudently incurred costs. The Missouri Supreme Court has found otherwise. In a 2021 case, *Spire Missouri, Inc. v. Public Service Commission*,³⁴ Spire Missouri challenged the Commission's decision to disallow a portion of the company's prudently incurred cost of pursuing its general rate case. In upholding the Commission's decision, the Supreme Court said:

In terms of their reasonableness, these expenditures were entitled to a presumption of prudence, and the **prudence** of the expenditures was never called into question. Nonetheless, the PSC concluded that including all of these expenditures in setting Spire's future rates was not **just** because some of the expenses were not fair to ratepayers in that they were incurred to benefit (if anyone) Spire's shareholders. Implicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so. In setting rates the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable,' subject, of course, to judicial review that the PSC's conclusions are supported by competent and substantial evidence and not arbitrary, capricious, or an abuse of discretion. (Internal citations omitted. Emphasis in original.)

Decision

Under customary methods of ratemaking, Liberty would recover its Winter Storm Uri related fuel and purchased power costs by starting with its FAC. Liberty's FAC includes a 95/5 sharing provision by which the company recovers 95 percent of those costs. In the rate cases in which Liberty's FAC was established, the Commission found that the sharing mechanism was necessary to ensure the company had sufficient financial incentive and motivation to operate at maximum efficiency. The same financial incentives and motivations apply in the situation facing Liberty during Winter Storm Uri.

³⁴ 618 S.W.3d 225 (Mo. banc 2021).

The prudence of Liberty's decisions relating to Winter Storm Uri will be addressed in subsequent issues, but for this issue, prudence is not relevant. The securitization statute specifically requires the Commission to compare the results of securitization to the results under traditional methods of cost recovery. It also requires the Commission to find that the imposition and collection of the utility tariff charge resulting from the securitization of these costs will be just and reasonable and in the public interest.

The Commission finds that allowing Liberty to use securitization to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest.

E) Should Liberty's recovery reflect an offset based on higher than normal customer revenues received by Liberty during Winter Storm Uri?

Findings of Fact

26. During the abnormally cold weather resulting from Winter Storm Uri, Liberty sold more electricity than it would have sold during a normal February. Staff compared Liberty's actual revenues to its expected revenues during a normal February and concluded that Liberty collected \$2,760,686 in "excess" revenues. Staff proposes to use this amount of "excess" revenue to partially offset the "Qualified Extraordinary Costs" incurred by Liberty.³⁵

Conclusions of Law

There are no additional conclusions of law for this issue.

³⁵ Lange Rebuttal, Ex. 108, Page 33, Lines 11-16. See also, McMellen Rebuttal, Ex. 100, Page 5, Lines 12-17.

Decision

As the Commission previously concluded, the securitization statute requires the Commission to find that the recovery of costs to be financed using securitized utility tariff bonds is just and reasonable and in the public interest. Staff seeks to use this requirement to justify the offset of \$2,760,688 in “excess” revenues. Staff’s proposal is not justified.

The securitization statute defines what is to be treated as a qualified extraordinary cost and that definition does not call for any offset of revenues against those costs. This is the same argument that Liberty raised against the inclusion of a five percent reduction in fuel and purchased power discussed in the previous issue. But that argument is applicable here, while it was not in the other circumstance.

The difference is that Staff’s theory of offsetting revenue would not be a part of the company’s recovery under traditional ratemaking. In traditional ratemaking no revenue adjustment is made for the effect of past weather. If a summer is hot and an electric company sells a lot of electricity to run air conditioners, no adjustment is made to reduce the company’s rates to retroactively claw back that “excess” revenue. Similarly, the company would not be allowed to increase its rates to remedy the shortfall in expected revenue that would result from a cooler than normal summer. Going forward a company’s future rates would be normalized to account for the effect of weather, but that weather normalization would affect future rates, and would not be used to balance out the effect on revenue resulting from past weather.

Staff’s proposal is not founded in traditional ratemaking and the proposed offsetting of qualified extraordinary costs eligible for securitization under the securitization statute would not be just and reasonable. Staff’s proposed offset is rejected.

F) Should Liberty's recovery reflect an offset based on revenues that Liberty's Riverton 11 unit should have generated during Winter Storm Uri, and, if so, how much?

Findings of Fact

27. Riverton Unit 11 is a 1966 Westinghouse W191 dual fuel turbine that Liberty purchased used. The turbine was placed into service in 1988 at the Riverton generating station in Riverton, Kansas.³⁶

28. Riverton Unit 11, and its sister unit, Riverton Unit 10, each with a generating capacity of 15 MW, run on natural gas as a primary fuel, but are capable for running on fuel oil (diesel) as a backup fuel source.³⁷

29. Due to air permit restrictions imposed by the Kansas Department of Health and Environment, Riverton Units 10 and 11 do not routinely operate on fuel oil.³⁸

30. The use of fuel oil in Riverton Units 10 and 11 is permitted only under the following conditions:

- a. The natural gas delivery system must break down and the required gas supply become unavailable to Liberty;
- b. The power requirements from the Riverton station cannot be assumed by power generating equipment other than Unit 10 and Unit 11; and
- c. The owner or operator shall be permitted to use distillate fuel oils as needed to meet the black start testing requirements by any Federal or State regulatory agency. Water injection will not be required during black start testing. None of the electricity produced during the black start testing shall be sold on the bulk electric system.³⁹

³⁶ Mushimba Surrebuttal, Ex. 10, Page 5, Lines 1-3.

³⁷ Hull Rebuttal, Ex. 105, Page 2, Lines 3-7.

³⁸ Mushimba Surrebuttal, Ex. 10, Page 5, Lines 20-26.

³⁹ Hull Rebuttal, Ex. 105, Page 3, Lines 12-22. These limitations are found in the Kansas air permit, pages 11-12. That permit is attached to Mushimba Surrebuttal, Ex. 10, Schedule BM-2.

31. Riverton Unit 10 was on forced outage beginning on February 8, 2021, before Winter Storm Uri, and was not available for use at any time during the storm.⁴⁰

32. On February 12, 2021, at the start of Winter Storm Uri, Riverton Unit 11 was forced into outage due to a limited natural gas supply.⁴¹

33. Liberty notified the Kansas Department of Health and Environment of the emergency conditions on the morning of February 15, 2021, and the Kansas authorities authorized the use of fuel oil to power Riverton Unit 11 at that time.⁴²

34. After receiving permission to use fuel oil to power Riverton Unit 11, Liberty unsuccessfully attempted to start that unit, beginning at 12:01 p.m. on February 15, 2021. Liberty tried to start the unit another 26 times over the next 28 hours but it would not start.⁴³

35. At the time Liberty began trying to start Riverton Unit 11 the temperature as measured by the plant's weather station was -0.7 degrees Fahrenheit. These are difficult conditions in which to start a turbine on diesel fuel.⁴⁴ The extreme cold was likely the reason the unit would not start.⁴⁵

36. Electric production from Riverton Unit 11 would have been very valuable during Winter Storm Uri. Staff calculated that Liberty had enough fuel oil in storage at Riverton to allow Riverton Unit 11 to run for a set number of hours during Winter Storm Uri. Staff then calculated a price for that available run time from February 15 using hourly day ahead locational market prices published by the SPP integrated resource market at

⁴⁰ Hull Rebuttal, Ex. 105, Page 3, Lines 3-5.

⁴¹ Hull Rebuttal, Ex. 105, Page 3, Lines 6-7.

⁴² Mushimba Surrebuttal, Ex. 10, Page 7, Lines 11-15.

⁴³ Mushimba Surrebuttal, Ex. 10, Page 7, Lines 11-17.

⁴⁴ Mushimba Surrebuttal, Ex. 10, Page 7, Lines 18-24.

⁴⁵ Transcript, Vol. 3, Page 197, Lines 6-13.

Liberty's Riverton node. Staff took the sum of the prices for the amount of hours Riverton Unit 11 could have run and multiplied it by the 15 MW of electricity that the unit could have produced if it has been able to start, and calculated that Liberty had lost the opportunity to earn several million dollars in sales revenue for its customers if Riverton Unit 11 had been able to start.⁴⁶ Staff proposed that the amount that Liberty might have earned if Riverton Unit 11 had been started be disallowed from Liberty's recovery because Liberty's failure to tune the unit for operation in winter ambient temperatures was imprudent.⁴⁷

37. Public Counsel noted that Staff's proposed disallowance was based on the number of hours that Riverton Unit 11 could have run using the amount of available fuel oil. The fuel oil tanks at Riverton were not full at the start of Winter Storm Uri. If the fuel oil tanks had been full, Riverton Unit 11 could have been run longer and earned more money. On the basis that Liberty's failure to keep its fuel oil tanks full was imprudent, Public Counsel calculated that the disallowance proposed by Staff should have been substantially larger. Public Counsel proposed a disallowance in that larger amount.⁴⁸

38. Liberty's witness, Dr. Brian Mushimba, who is the Senior Director for Generation Operations – Central Region for Liberty, and holds a Ph.D. in engineering,⁴⁹ credibly explained:

⁴⁶ Hull Rebuttal, Ex. 105, Page 7, Lines 3-17. The description of the disallowance proposed by Staff and Public Counsel is deliberately vague because the details of Liberty's black start capabilities and the related numbers are designated as confidential or highly confidential.

⁴⁷ Hull Rebuttal, Ex. 105, Page 8, Lines 8-11.

⁴⁸ Robinett Surrebuttal, Ex. 211, Pages 4-5, Lines 3-22, 1-18.

⁴⁹ Mushimba Surrebuttal, Ex. 10, Page 1, Lines 12-13. In contrast to Dr. Mushimba's training as an engineer and experience regarding operation of electrical generating units, Staff's witness, Jordan T. Hull, has a degree in biological engineering, and has never been responsible for tuning or starting a combustion turbine such as Riverton Unit 11. Transcript, Vol. 3, Page 310, Lines 16-19. .

tuning a generation turbine is a complex task of adjustment or modification of the internal combustion of the engine of the unit to yield optimal performance and efficiency at given ambient temperatures. It's an iterative process that ensures that at a given ambient temperature, the fuel-oxygen ratio and the subsequent combustion is optimal and the resultant energy output is maximized while controlling undesirable byproducts of the combustion, such as emissions.⁵⁰

39. The tuning process requires several months of advance planning to implement.⁵¹ Further, in order to tune the unit for use at a particular temperature, the ambient air must be at that temperature. In other words, to tune the unit to sub-zero temperatures, the air temperature must be sub-zero.⁵²

40. Tuning a unit to operate on natural gas does not improve the performance of the unit when operating on fuel oil.⁵³

41. Liberty's air permit from the Kansas Department of Health and Environment did not authorize the burning of fuel oil for the purpose of tuning Riverton Unit 11.⁵⁴

42. As previously found, Liberty's air permit does allow for the burning of fuel oil to meet black start testing requirements.⁵⁵

43. A black start is a circumstance in which a utility must restart its electrical generating system after a blackout. Most electrical generating units require flowing electricity to be able to start. In a total blackout no flowing electricity will be available, so a black start unit must be able to begin generating electricity on its own, which it can then send into the distribution system to restart additional generation units.⁵⁶

⁵⁰ Mushimba Surrebuttall, Ex. 10, Page 5, Lines 5-12.

⁵¹ Transcript, Vol. 3, Pages 202-203, 2-25, 1-6.

⁵² Transcript, Vol. 3, Page 194, Lines 3-10.

⁵³ Mushimba Surrebuttall, Ex. 10, Page 7, Lines 1-10.

⁵⁴ Mushimba, Surrebuttall, Ex. 10, Page 6, Lines 6-7.

⁵⁵ As previously indicated much of the testimony surrounding black start capabilities is confidential or highly confidential.

⁵⁶ Transcript, Vol. 3, Page 192, Lines 13-22.

44. Black start testing is not the same as tuning and is an involved process that cannot be undertaken in an emergency situation.⁵⁷

45. Riverton Unit 11 was not designated with SPP as a black start unit at the time of Winter Storm Uri.⁵⁸

Conclusions of Law

R. The disallowance proposed by Staff and Public Counsel challenges the prudence of Liberty's decision not to tune Riverton Unit 11 to operate at the extremely cold temperatures experienced during Winter Storm Uri. The Commission has described its prudence standard as follows:

The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.⁵⁹

S. The Commission's prudence standard also presumes that a utility's costs have been prudently incurred. However, that presumption does not survive a showing of inefficiency or improvidence. If some other participant in the proceeding creates "a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."⁶⁰

⁵⁷ Transcript, Vol. 4 (confidential), Pages. 3-15. Dr. Mushimba described the black start testing requirements in detail during in camera portions of the hearing.

⁵⁸ Mushimba Surrebuttal, Ex. 10, Pages 8-9, Lines 7-24, 1-16. Dr. Mushimba provides much more detail about the designation of black start units in his testimony, but that testimony is designated as confidential.

⁵⁹ *In the Matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company, and In the Matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues*, 27 Mo. P.S.C. (N.S.) 164, 194 (1984), quoting, *In re. Consolidated Edison Company of New York, Inc.* 45 P.U.R., 4th, 1982.

⁶⁰ *Union Electric*, at 193

T. The Commission's prudence standard has subsequently been recognized by reviewing courts.⁶¹

U. Liberty's witness, John J. Reed, provides a succinct description of the regulatory prudence standard in his surrebuttal testimony. The Commission will adopt that description:

The standard for the evaluation of whether costs are, or are not, prudently incurred is built on four principles. First, prudence relates to actions and decisions. Costs themselves are neither prudent nor imprudent. It is the decision or action that led to cost incurrence that must be reviewed and assessed, not the results of those decisions. In other words, prudence is a measure of the quality of decision-making, and does not reflect how the decisions turned out. The second feature is a presumption of prudence, which is often referred to as a rebuttable presumption. The burden of showing that a decision is outside of the reasonable bounds falls, at least initially, on the party challenging the utility's actions. The third feature is the total exclusion of hindsight from a properly constructed prudence review. A utility's decisions must be judged based upon what was known or reasonably knowable at the time of the decision being made by the utility. Information that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision and subsequent information on "how things turned out" cannot influence the evaluation of the prudence of a decision. The final feature is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost. This standard recognizes that reasonable people can differ and that there is a range of reasonable actions and decisions that is consistent with prudence. Simply put, a decision can only be labelled as imprudent if it can be shown that such a decision was outside the bounds of what a reasonable person would have done under those circumstances.⁶²

⁶¹ See, e.g., *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n*, 954 S.W. 2d 520 (Mo. App. W.D. 1997). See also *Office of Public Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371 (Mo. banc 2013) (A presumption of prudence is appropriately applied in arms-length transactions, but not in transactions with affiliates.)

⁶² Reed Surrebuttal, Ex. 1, Pages 7-8, Lines 5-24, 1-2.

Decision

Liberty could have made substantial off-system sales if it had been able to start operating Riverton Unit 11 on fuel oil during the supply disruptions and resulting high electricity market prices occasioned by Winter Storm Uri. Staff and Public Counsel argue that Liberty would have been able to start that unit on fuel oil if it had properly tuned the unit on fuel oil to the type of temperatures likely to be encountered in the winter months. That argument is not supported by the evidence.

First, Liberty's air permit from the Kansas Department of Health and Environment did not allow Liberty to burn fuel oil in Riverton Unit 11 except in specified emergency conditions, the most important being that the natural gas supply for the turbine must have become unavailable. During Winter Storm Uri the natural gas supply did indeed become unavailable and the Kansas authorities responded by allowing Liberty to burn fuel oil in that unit. Unfortunately, despite repeated efforts, Liberty was unable to start the unit on fuel oil.

The Kansas air permit did allow Liberty to burn fuel oil to "meet the black start testing requirements by any Federal or State regulatory agency." However, Riverton Unit 11 was not designated as a black start unit with SPP at the time of Winter Storm Uri, so no black start testing requirements would have been applicable to that unit. As a result, the exceptions contained in the Kansas air permit would not have applied, and Liberty was forbidden to burn fuel oil in the unit.

In any event, black start testing is not the same as tuning. There was no evidence that black start testing would have to be done at any particular time of the year. Thus, black start testing could have been performed during the summer, or even during more

moderate winter weather, and Liberty still would not have discovered that the unit would not start on fuel oil at sub-zero temperatures.

In summary, Liberty's air permit from Kansas authorities did not allow Liberty to burn fuel oil in Riverton Unit 11 for purpose of tuning that unit to operate during extremely cold weather. The Commission will not find that Liberty was imprudent for failing to violate that air permit. Even if Liberty had been permitted to tune the unit using fuel oil rather than natural gas, there is no indication that tuning the unit would have made any difference in Liberty's ability to start the unit on fuel oil in sub-zero temperatures.

Public Counsel's argument that Liberty was imprudent in not ensuring that its fuel oil tanks at Riverton were kept full before Winter Storm Uri is an extension of Staff's argument that Liberty was imprudent in failing to tune Riverton Unit 11 to operate in winter weather conditions. Since Staff's argument fails, Public Counsel's extension of that argument must also fail.

There was no evidence presented that would support a finding of imprudence, and the Commission will make no adjustments on that basis.

G) Should Liberty's recovery reflect a disallowance based on Liberty's resource planning?

Findings of Fact

46. Liberty is a member of the Southwest Power Pool (SPP).

47. Utilities that are members of an RTO commonly rely on market purchases as one source of generation in their portfolio.⁶³

⁶³ Reed Surrebuttal, Ex. 1, Page 15, Lines 16-17.

48. Liberty is in compliance with SPP's Resource Adequacy requirements,⁶⁴ meaning Liberty needs to have accredited capacity 12 percent greater than its forecasted peak load.⁶⁵

49. SPP uses complex and accepted methodologies to develop its resource adequacy requirements, including a biennial Loss of Load Expectation study with a "one day in ten year" criterion for determining reserve margins for resource adequacy requirements.⁶⁶

50. Near the start of 2020,⁶⁷ Liberty retired its 200 MW Asbury coal plant.⁶⁸ The prudence of that retirement will be addressed in more detail later in this order with regard to securitization of Energy Transition Costs.

51. Liberty undertook an analysis of Asbury's economics in both 2017 and 2019, finding in its 2019 Integrated Resource Plan that retiring Asbury would result in significant savings for Liberty's customers.⁶⁹

Conclusions of Law

V. The Commission's electric utility resource planning rule, 20 CSR 4240-22.010(2) states in part:

The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. ...

⁶⁴ Doll Direct, Ex. 2, Page 8, Lines 4-5.

⁶⁵ Mantle Rebuttal, Ex. 200, Page 24, Lines 6-7.

⁶⁶ Doll Surrebuttal, Ex. 4, Page 17, Lines 11-14.

⁶⁷ The exact retirement date is at issue in other aspects of this case.

⁶⁸ Doll Surrebuttal, Ex. 4, Page 4, Line 20.

⁶⁹ Doll Direct, Ex. 3, Page 3, Lines 20-22.

Decision

Public Counsel argues that Liberty's decision to retire its Asbury coal-fired plant was imprudent. The aspect of that decision that is at issue regarding Liberty's recovery of Winter Storm Uri fuel costs is Public Counsel's allegation that Liberty imprudently failed to plan to secure and retain sufficient capacity that it controls to meet the needs of its customers independent of its membership in, and purchases from, SPP. Public Counsel points to the unique circumstances that occurred during Winter Storm Uri to argue that Liberty should not have relied on the collective capacity available in the SPP market to serve its load, because, as shown by the events of Uri, that capacity can become very expensive when SPP's available capacity becomes strained.

No doubt, if Liberty had more capacity available to sell into the SPP market during Winter Storm Uri, it could have earned enough from those sales to offset the fuel costs that it now seeks to securitize. But that fact is entirely based on perfect hindsight. Liberty planned to have sufficient capacity to meet all requirements established by SPP. Other than showing a bad result, Public Counsel has not demonstrated any imprudence in Liberty's planning process. The Commission will not impose the disallowance proposed by Public Counsel.

H) Should Liberty's recovery reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Findings of Fact

52. Public Counsel asserts that Liberty expects to claim a Missouri jurisdictional tax deduction of \$204,500,939 on the 2021 consolidated income tax return,⁷⁰ resulting in a tax savings due to the Winter Storm Uri loss of \$48,753,024. Public Counsel would

⁷⁰ Riley Rebuttal, Ex. 208, Page 21, Lines 10-11.

gross that amount up to \$64,012,720 and add carrying charges to bring the total reduction to \$68,346,382.⁷¹ Public Counsel argues this tax benefit should be recognized as a reduction in the amount of securitization.⁷²

53. Public Counsel incorrectly asserts that the proceeds Liberty will receive from the securitization bonds are not taxable, so the company will be compensated, yet still enjoy a tax break for the loss.⁷³ In fact, the charges that will be used to pay the bonds is taxed as income to the utility.⁷⁴ Public Counsel's witness acknowledged that fact in his testimony at the hearing.⁷⁵

54. The tax treatment of Winter Storm Uri losses may create a tax timing issue that will result in an adjustment of Accumulate Deferred Income Tax (ADIT) as an offset to Liberty's rate base. Customers do not receive the recorded amount of the ADIT liability, instead, they benefit because ADIT liability reduces rate base and customers are charged a lower revenue requirement reflecting the lower cost of capital.⁷⁶

Conclusions of Law

W. Public Counsel's witness cites two provisions of the securitization statute to support his suggestion to use Liberty's asserted tax deduction as an offset to the amount to be securitized for Qualified Extraordinary Costs related to Winter Storm Uri. First, he cites the definition of "Energy Transition Costs" in Section 393.1700.1(7), RSMo, which includes some provisions relating to tax benefits of accumulated and excess deferred income taxes. However, the Winter Storm Uri costs are Qualified Extraordinary Cost, not

⁷¹ Riley Rebuttal, Ex. 208, Page 21, Lines 15-19.

⁷² Riley Rebuttal, Ex. 208, Page 21, Lines 12-13

⁷³ Riley Rebuttal, Ex. 208, Page 22, Lines 11-13.

⁷⁴ Bolin Surrebuttal, Ex. 103, Page 5, Lines 5-9.

⁷⁵ Transcript, Vol. 5, Page 391, Lines 6-14.

⁷⁶ Emery Surrebuttal, Ex. 8, Page 38, Lines 12-19.

Energy Transition Costs, and the definition of such costs, found at Section 393.1700.1(13), RSMo, contains no provisions regarding income taxes.

X. Public Counsel's witness also cites Section 393.1700.1(8), RSMo, which includes various taxes within the definition of "Financing Costs." Again, the costs in question are qualified extraordinary costs, not financing costs.

Y. Section 393.1700.2(3)(c)m calls for special treatment of ADIT, but only for energy transition costs and qualified extraordinary expenses that include retired or abandoned facility costs. Those provision do not apply to Winter Storm Uri costs.

Z. Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Liberty to account for any potential tax benefits that may lower its actual securitized utility tariff costs associated with Winter Storm Uri through a future rate case.

Decision

Public Counsel's proposal that income tax deductions for Winter Storm Uri costs be disallowed from the costs to be securitized is not supported by the facts or the law, and the Commission will not make that disallowance.

I) What are the appropriate carrying costs for Winter Storm Uri?

Findings of Fact

55. Liberty incurred Winter Storm Uri costs in February, 2021, but has not yet recovered those costs from its customers. The securitization statute allows Liberty to securitize and recover carrying costs. Liberty contends those carrying costs should be

calculated at its Weighted Average Cost of Capital (WACC), 6.77 percent, which the Commission set in Liberty's 2019 rate case, File No. ER-2019-0374.⁷⁷

56. Staff agrees that Liberty must be allowed to recover carrying costs for Winter Storm Uri, but contends those carrying costs should be calculated using Liberty's long-term debt rate of 4.65 percent.⁷⁸

57. The Winter Storm Uri costs are operating costs, not capital improvements or replacements to existing plant and equipment. It is inappropriate for Liberty to be allowed a profit on expenditures for the purchase of energy, as it would if carrying costs were calculated using its WACC.⁷⁹

58. Public Counsel contends carrying costs should be recovered at Liberty's short-term cost of debt as they will, in fact be carried for less than two years.⁸⁰

59. Public Counsel argues the short-term debt rate used should be Liberty's parent company's (LUCo's) average short-term debt rate for each month, starting with the financing of Winter Storm Uri costs in February 2021 until the securitized bonds are issued.⁸¹

Conclusions of Law

AA. Section 393.1700.1(13), which defines "qualified extraordinary costs" for purposes of the securitization statute, specifically states that such costs include carrying charges. The statute does not further define carrying charges.

⁷⁷ Hall Direct, Ex. 6, Page 4, Lines 14-20.

⁷⁸ McMellen Rebuttal, Ex. 100, Page 4, Lines 11-16. (As corrected at Transcript, Vol. 3, Page 211.)

⁷⁹ Murray Rebuttal, Ex. 206, Page 3, Lines 20-23.

⁸⁰ Murray Rebuttal, Ex. 206, Page 6, Lines 1-17.

⁸¹ Murray Rebuttal, Ex. 206, Pages 7-8, Lines 12-15, 1-4. (As corrected at Transcript, Vol. 7, Page 501.)

Decision

The Commission believes that Staff's proposal to calculate carrying costs for Winter Storm Uri related costs at Liberty's long-term debt rate of 4.65 percent is most appropriate because the costs to be securitized are not capital costs and there is no reason Liberty should be allowed to earn a profit on those costs. Public Counsel's proposal to use monthly short-term debt rates for the purposes of calculating carrying costs is also inappropriate as the term to which the short-term debt rates would be applied is a period approaching two years.

J) What is the appropriate discount rate to use in calculating the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Findings of Fact

60. Staff's witness, Mark Davis, an investment banker, offered his opinion that a reasonable discount rate to use for Winter Storm Uri costs is the company's long-term cost of debt of 4.65 percent.⁸²

Conclusions of Law

BB. Section 393.1700.2(3)(c)b requires that this financing order make a finding that the proposed securitization is expected to "provide quantifiable net present value benefits to customers" as compared to recovery of those costs without the issuance of the securitized bonds. In order to make that comparison, the Commission must determine the appropriate discount rate to be used in the calculations of the amounts that would be recovered without securitization.

⁸² Transcript, Vol. 7, Pages 614-615, Lines 22-25-1.

Decision

This issue simply asks what discount rate should be plugged into a formula to determine whether securitization would be a benefit to Liberty's customers. It does not have a direct impact on the amount that Liberty should be allowed to recover through securitization. The Commission believes the appropriate discount rate to use in calculating the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking is Liberty's long-term debt rate of 4.65 percent as proposed by Staff witness Mark Davis.

3) Asbury

A) How much of the amounts, if any, that Liberty is seeking to securitize for Asbury would Liberty recover through traditional ratemaking?

Findings of Fact

61. Staff witness Amanda McMellen testified that Liberty's total energy transition costs, including carrying costs, should be \$66,107,823.⁸³

Conclusions of Law

CC. Section 393.1700.2(3)(c)b, RSMo requires the Commission to find that the securitization process are expected to provide net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.

Decision

It is not clear why this question was identified as a separate issue by the parties. Staff suggests that Liberty should not be allowed to recover energy transition costs aside from what it would be able to recover through traditional ratemaking. Staff then argues that the amount Liberty should be allowed to recover will be determined by the answers

⁸³ Ex. 113, Page 1, Line 1.

to the other identified issues. No other party addresses this issue in their briefs. The Commission agrees that the total energy transition costs will be determined by the answers to the other identified issues and concludes a separate finding about this particular issue is not needed.

B) What is the appropriate method of customary ratemaking absent securitization? and

C) Under RSMo 393.1700.2(1)(f), what is the “traditional method of financing”? What are the costs that would result “from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers”?

Findings of Fact

62. In compliance with the Commission’s order in the company’s 2019 rate case, File No. ER-2019-0374, Liberty established a regulatory liability account to track the costs associated with the retiring of Asbury.⁸⁴

63. In traditional ratemaking, Liberty would include the various components of the Asbury retirement costs as regulatory asset and liability balances in its rate base total or in its proposed revenue requirements. Those costs would be amortized over a period of time.⁸⁵ Liberty suggests that amortization would be over a thirteen-year period,⁸⁶ and that amortization period was accepted by Staff.⁸⁷

Conclusions of Law

DD. Section 393.1700.2(1)(f) requires a petition to securitize energy transition costs to include:

A comparison between the net present value of the cost to customers that are estimated to result from the issuance of securitized utility tariff bonds

⁸⁴ Emery Direct, Ex. 7, Page 6, Lines 4-24.

⁸⁵ Emery Direct, Ex. 7, Page 7, Lines 8-16.

⁸⁶ Emery Direct, Ex. 7, Page 20, Lines 5-9.

⁸⁷ McMellen Rebuttal, Ex. 100, Page 8, Lines 18-19.

and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers. The comparison should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers.

EE. Similarly, Section 393.1700.2(3)(c)b, RSMo requires the Commission to find that the securitization process is expected to provide quantifiable net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.

Decision

The question presented in these issues is essentially the same, so they will be addressed together. The traditional method of ratemaking would occur through a general rate case and would entail amortization of the costs to be recovered over a period of years with the company being allowed to recover its carrying costs during the period of amortization. In this case, the parties agree that a thirteen-year amortization would be appropriate. The amount that would be recovered will be determined through the answers to subsequent issues. The net present value comparison required by the statute will be addressed in issue number five.

D) What is the net book value of the retired Asbury plant?

Findings of Fact

64. Liberty's witness, Charlotte Emery, credibly testified that the net book value of the retired Asbury plant is \$159,414,474. That number is comprised of a net retired

plant balance of \$157,740,873, and \$1,673,601 representing the value of two Asbury environmental capital projects that were abandoned when the plant was retired.⁸⁸

65. Staff accepts the net book value amount proposed by Liberty.⁸⁹

66. Public Counsel's witness, John S. Riley, proposed to use a net book value of \$155,044,297. He took that number from testimony submitted by a Liberty witness in the company's recent rate case.⁹⁰

67. Liberty's witness testified that the number referenced by Public Counsel represented the company's projection of how much of the Asbury generating plant would be retained compared to the actual net book value of the plant as of January 2020.⁹¹

68. The net book value of the Asbury plant is a factor in the calculation of the Asbury securitization revenue requirement.⁹²

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The \$159,414,474 net book value of the Asbury plant proposed by Liberty and accepted by Staff is the more reasonable calculation of that value. Public Counsel's reliance on an alternative number drawn from testimony in another case that is not part of the record in this case, is not reliable.

⁸⁸ Emery Surrebuttal, Ex. 8, Page 26, Lines 1-13. The environmental capital projects are addressed in issue 3 P of this order.

⁸⁹ Ex. 113, Page 2, Line 1.

⁹⁰ Riley Rebuttal, Ex. 208, Page 7, Lines 10-13.

⁹¹ Emery Surrebuttal, Ex. 8, Page 25, Lines 14-23.

⁹² Ex. 113, Page 2, Line 1.

E) Was it reasonable and prudent for Liberty to retire Asbury?

Findings of Fact

69. Asbury Unit 1 was a coal-fired Babcock & Wilcox cyclone steam generator that was commissioned in 1970. When it began operations, it had a nominal rating of 206 MW and sourced its coal onsite via mine mouth operation. In 1990, the plant was converted to use a blend of low-sulfur Wyoming coal and local bituminous coal⁹³

70. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions at a cost of \$33 million.⁹⁴ In 2014, the Asbury plant was retrofitted with an AQCS to comply with the federal Mercury Air Toxic Standards and the Cross State Air Pollution Rule.⁹⁵

71. The AQCS included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. The upgraded steam turbine increased nominal output of the unit to 218 MW.⁹⁶

72. The AQCS cost \$141 million in 2014.⁹⁷

73. Asbury was de-designated from the SPP and officially retired in March of 2020.⁹⁸

⁹³ Landoll Direct, Ex. 13, Page 3, Lines 12-18.

⁹⁴ Graves Direct, Ex. 16, Page 6, Lines 8-9.

⁹⁵ Landoll Direct, Ex. 13, Page 4, Lines 11-20.

⁹⁶ Landoll Direct, Ex. 13, Page 4, Lines 15-20.

⁹⁷ Graves Direct, Ex. 16, Page 6, Line 10.

⁹⁸ Landoll Direct, Ex. 13, Page 5, Lines 15-17.

74. Both the selective catalytic reduction system and the AQCS were reviewed by the Commission and allowed into Liberty's rate base.⁹⁹ Together, these systems account for 73 percent of Liberty's total undepreciated investment in Asbury.¹⁰⁰

75. Liberty's 2016 Integrated Resource Plan (IRP) study favored continued operation of Asbury until 2035. But, beginning in 2017, studies showed less economic support for continued operation of Asbury. By 2019, Liberty's IRP showed that retirement of Asbury became the less expensive option when compared to continuing to operate the plant.¹⁰¹ According to that study, retiring Asbury resulted in savings over maintaining Asbury until its end of life, 94 percent of the time, on a probability-weighted basis. Calculated savings ranged from \$18 million to \$144 million, with an estimated savings of \$93 million on a 20-year expected value basis.¹⁰²

76. In 2019, when the decision was made to retire Asbury, Liberty had a winter peak reserve margin of 391 MW, about 35 percent more than is typically needed. That meant that if Asbury were retired, Liberty would still have reserve margins above the reliability requirement throughout the projected 20-year planning window.¹⁰³

77. Power plants are scheduled and dispatched to collectively provide the right amount of power needed across a large area at any instant in time. The market system, operated by SPP, generally dispatches the least costly generating plant to satisfy total load. The result of this process is generally to dispatch the cheapest plants first. Hydro power or renewables such as wind and solar, which have no fuel costs, are often

⁹⁹ Graves Direct, Ex. 16, Page 6, Lines 17-18.

¹⁰⁰ Graves Direct, Ex. 16, Pages 6-7, Lines 22, 1-2.

¹⁰¹ Graves Direct, Ex. 16, Pages 9-10, Lines 9-23, 1-16.

¹⁰² Doll Direct, Ex. 3, Page 16, Lines 15-21.

¹⁰³ Graves Direct, Ex. 16, Page 14, Lines 5-14.

dispatched first, followed by nuclear and whichever coal or efficient gas plant is next cheapest. Finally, relatively inefficient, older plants will be dispatched. In a market region like SPP, the marginal costs of the last plant dispatched in any hour sets the market price paid to all the units then operating.¹⁰⁴

78. Asbury's position on the SPP supply curve grew progressively worse between 2010 and 2019, primarily due to decreasing natural gas prices and declining cost and increasing penetration of renewable generation.¹⁰⁵ In addition, Asbury's marginal cost to operate had become higher than the majority of coal units in SPP. That meant it had become uneconomic for Liberty to run Asbury for much of the time.¹⁰⁶

79. Before 2016, Liberty had self-committed Asbury to operate as a baseload plant. It did that to meet the obligations of its coal transportation contract, which required Liberty to take minimum delivery quantities. In 2016, Liberty renegotiated its coal transportation contract to remove the minimum delivery requirements. Thereafter, Asbury was dispatched in response to market signals.¹⁰⁷

80. Self-commitment allowed Asbury to operate more consistently, but it also increased the risk that the unit would operate uneconomically. When a utility self-commits a particular unit, it is telling the market that this unit will run no matter what. That commitment also means that the self-committed unit will be paid at the market rate, not at its actual cost to operate. So, if the market rate is set by a lower-cost unit, such as a renewable resource, the self-committed unit will operate at a loss.¹⁰⁸

¹⁰⁴ Graves Direct, Ex. 16, Page 17, Footnote 19.

¹⁰⁵ Graves Direct, Ex. 16, Pages 26-27, Lines 15-19, 1-7.

¹⁰⁶ Graves Direct, Ex. 16, Page 27, Lines 8-12.

¹⁰⁷ Rooney Direct, Ex. 11, Page 4, Lines 1-10.

¹⁰⁸ Transcript, Page 175-176, Lines 17-25, 1.

81. By 2015, Asbury was showing negative net operating margins,¹⁰⁹ and Liberty stopped self-committing Asbury in October 2016.¹¹⁰

82. After it discontinued self-committing Asbury, the unit's annual capacity factor began to decline as the market selected units with better heat rates, lower fuel costs, shorter start durations, shorter minimum downtimes, and faster ramp rates.¹¹¹

83. Despite efforts to improve its efficiency,¹¹² by 2019, Asbury's net capacity factor (a measure of how much a unit generates over time compared to how much it could generate if it ran at the top of its net capacity in that time) had dropped to 46.97 percent, compared to 76.42 percent in 2010.¹¹³

84. Based on heat rate, Asbury was the least efficient coal-fired unit in Liberty's fleet.¹¹⁴

85. The market forces that made Asbury's operation increasingly uneconomic also apply to other coal plants in the United States, such that a third of the U.S. coal fleet that was operating in 2012 has now retired.¹¹⁵

86. Liberty's 2019 IRP found that retiring Asbury in 2019 and replacing it with a mix of solar and storage would result in savings amounting to \$93 million on a 20-year expected value basis.¹¹⁶

87. Electric utilities choose resource options because they are expected to have the lowest costs in most, but not all circumstances. A prudent resource plan should be

¹⁰⁹ Doll Direct, Ex. 3, Page 8, Lines 18-13.

¹¹⁰ Doll Direct, Ex. 3, Page 8, Lines 10-14.

¹¹¹ Rooney Direct, Ex. 11, Page 4, Lines 10-13.

¹¹² Doll Direct, Ex. 3, Page 12, Lines 6-20.

¹¹³ Doll Direct, Ex. 3, Page 11, Table AJD-2 and Lines 3-9.

¹¹⁴ Rooney Surrebuttal, Ex. 12, Page 2, Lines 19-20. See *also*, Transcript, Page 177, Lines 10-11.

¹¹⁵ Graves Direct, Ex. 16, Page 29, Lines 11-13.

¹¹⁶ Graves Direct, Ex. 16, Page 21, Lines 10-18.

understood to be partially exposed to other alternatives that turn out to have lower costs in some, but not the majority of reasonably foreseeable planning scenarios.¹¹⁷

88. A utility's level of earnings is subject to periodic review and approval by regulators. If investments made by a utility result in unexpected gains through avoided costs or reduced risks, the utility will not be able to keep the upside profits beyond its next rate case. As a result, it would be unfair to assign downside losses to the utility simply because the investment loses its economic advantages before its costs are fully recovered from ratepayers, even if the particular investment is no longer used and useful.¹¹⁸

89. Had Liberty continued to operate Asbury, it was reasonable to anticipate that its customers would have paid more for the plant's increasingly higher costs relative to alternative resources.¹¹⁹

90. Had Asbury continued to operate, Liberty would have had to spend an additional \$20 million to upgrade its coal ash handling facilities to comply with federal regulations. That additional investment was avoided when Asbury was closed.¹²⁰

91. A study relied upon by Liberty determined that by the time the decision was made to close Asbury, the plant had a \$134 million negative valuation, meaning if it were sold, Liberty would have to pay the "buyer" a substantial sum to purchase and operate the facility and assume all associated liabilities.¹²¹

¹¹⁷ Graves Direct, Ex. 16, Page 43, Lines 13-21.

¹¹⁸ Graves Direct, Ex. 16, Pages 45-46, Lines 20-24, 1-3.

¹¹⁹ Graves Surrebuttal, Ex. 17, Page 13, Lines 18-20.

¹²⁰ Landoll Surrebuttal, Ex. 14, Page 8, Lines 5-16.

¹²¹ Landoll Direct, Ex. 13, Page 11, Lines 7-11. The valuation number was described as confidential in Landoll's testimony, but was revealed in Doll Surrebuttal, Ex. 4, Page 5, Lines 13-16.

92. Staff believes the early retirement of Asbury was just, reasonable and in the public interest, and the costs of that retirement should be recovered through securitization.¹²²

93. Renew Missouri believes securitizing the unrecovered costs related to the early retirement of Asbury serves the public interest and should be approved.¹²³

Conclusions of Law

The Commission's prudence standard was previously described in the Conclusions of Law relating to Winter Storm Uri costs in issue 2(F). That description will not be repeated here.

FF. The Commission's Electric Utility Resource Planning Rule, 20 CSR 4240-22, (the IRP rule), requires Missouri's investor-owned electric utilities, including Liberty, to file triennial reports identifying a preferred resource plan and resource acquisition strategy. The rule also requires the electric utilities to file annual update reports about those plans.

GG. The definition of "Energy Transition Costs" found in Section 393.1700.1(7)(a), RSMo requires that to qualify as such a cost, the retirement or abandonment of the subject electric generating facility must have been deemed reasonable and prudent by the commission through a final order issued by the commission.

HH. The definition of "Energy Transition Costs" found in Section 393.1700.1(7)(a) specifically states that such costs include the "undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating

¹²² McMellen Rebuttal, Ex. 100, Page 6, Lines 1-3.

¹²³ Owen Surrebuttal, Ex. 400, Page 21, Lines 11-13.

facility and any facilities ancillary thereto or used in conjunction therewith ...” That means such costs can be recovered through securitization even if a plant was retired or abandoned before its cost was fully depreciated because of an early retirement.

II. Missouri’s anti-CWIP statute, Section 393.135, RSMo, does not preclude the Commission from allowing recovery of the cost of abandoned utility property.¹²⁴

Decision

The Commission’s prudence standard requires that the prudence of Liberty’s decision to close the Asbury plant be judged by asking whether the conduct was reasonable at the time it was made, based on the knowledge available to the decision makers while they were making their decision. A decision does not need to be perfect. Rather, that decision must fall within a range of reasonable decisions.

The facts, as the Commission has found them, demonstrate that Asbury was a fifty-year old coal-fired generating plant that could no longer effectively compete in the electrical generation marketplace. As a result, its continued operation had become uneconomic and a drain on both the company and its ratepayers.

The prudence of Liberty’s decision to retire Asbury is challenged only by Public Counsel. Public Counsel argues in broad terms that Liberty deliberately chose to make Asbury uncompetitive in the SPP energy marketplace so that it could justify the building of what it describes as competing wind generation resources in order to pump up the utility’s rate base. In addition, Public Counsel, largely relying on hindsight, contends that Liberty imprudently failed to account for the need for reliably dispatched generation in a

¹²⁴ *State ex rel. Union Elec. Co. v. Pub. Serv. Com’n*, 687 S.W.2d 162 (Mo. banc. 1985)

Winter Storm Uri type situation. Neither argument is supported by the evidence in the record.

Based on the evidence that is in the record, the Commission deems Liberty's decision to retire Asbury when it did to be reasonable and prudent.

F) What is the value of the Asbury environmental regulatory assets?

Findings of Fact

94. The amount at issue relates to the amounts paid by Liberty for removal of asbestos at Asbury, and costs associated with the operation of ash ponds at Asbury.¹²⁵ Liberty recorded them in its books as a regulatory asset as it was ordered to do by the Commission in an earlier rate case. Since these were costs spent by Liberty for environmental activities at the Asbury plant, Staff agrees with Liberty that they be included in the Asbury securitized balance.¹²⁶

95. Public Counsel's witness, John S. Riley, did not oppose recovery of these costs, but expressed concern that this amount is also included in an Asset Retirement Obligation (ARO) related to Coal Combustion Residual impoundment for which Liberty is also seeking recovery.¹²⁷

96. An ARO is an obligation, legal or non-legal, associated with the retirement of a tangible long-lived asset for the cost of returning a piece of property to its original condition. AROs can be recognized either when the asset is placed in service or during its operational life when its removal obligation is incurred.¹²⁸

¹²⁵ Emery Surrebuttal, Ex. 8, Page 27, Lines 12-14.

¹²⁶ Bolin Surrebuttal, Ex. 103, Page 2, Lines 1-20.

¹²⁷ Riley Rebuttal, Ex. 208, Pages 9-10, Lines 3-13, 1-9.

¹²⁸ Bolin Rebuttal, Ex. 102, Page 9, Lines 8-11.

97. In her surrebuttal testimony, Liberty's witness, Charlotte Emery, explained that the amount at issue is related to the Asbury environmental regulatory asset costs that have been settled and paid by Liberty. The other ARO described by Public Counsel's witness represents additional costs Liberty expects to incur to complete the ARO for the coal ash ponds. The amount at issue will not be included in the other ARO.¹²⁹

98. The amount at issue, updated through May 2022, is \$1,643,357.¹³⁰

Conclusions of Law

JJ. The securitization statute, Section 393.1700.2,(3)(c)k allows the Commission to "specify a future rate making process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation. ..."

Decision

The Commission finds it is appropriate to allow Liberty to include the amount of \$1,643,357 in its securitized costs for Asbury environmental regulatory assets, as that amount is not also included in another ARO.

- G) What is the value of the Asbury fuel inventories? and**
Q) Should Liberty's recovery include basemat coal at Asbury?

These are the same issue stated in different ways and the Commission will address them together.

Findings of Fact

99. The coal pile at Asbury, or any other coal-fired generating facility includes a mat upon which the coal is piled. That mat is initially constructed of packed rock and or

¹²⁹ Emery Surrebuttal, Ex. 8, Page 28, Lines 12-18.

¹³⁰ Ex. 21, Schedule CTE-9 Asbury.

clay. The coal that is piled on the mat will, over the years, compress and mix into the mat as more coal is piled on top of the old coal.¹³¹

100. Basemat coal is the coal that has become compressed and mixed into the mat. As the utility scrapes the bottom of the pile it gets into the basemat coal/rock/clay mixture and the mixture can no longer be safely burned in the unit.¹³²

101. The cost of the coal that mixed into the basemat was incurred while the plant was operational, was necessary to operation of the plant, and its cost would not otherwise be recovered by Liberty.¹³³

102. There was no usable coal remaining at Asbury when it retired, but there was \$1,924,886 of basemat coal, of which the Missouri jurisdictional portion is \$1,532,832.¹³⁴ Liberty proposes to include this amount in the securitized costs associated with Asbury.

103. In Liberty's 2019 rate case, just before Asbury closed, the Commission allowed \$3,947,465 as coal inventory within the company's rate base, representing a 60-days burn of fuel.¹³⁵

104. In a stipulation and agreement in File No. ER-2020-0311, approved by the Commission on October 7, 2020, the parties agreed to defer the unrecoverable coal to FERC Account 182.3 for future ratemaking consideration.¹³⁶

105. Staff contends Liberty used the proper amount of \$1,532,832 as the value of the basemat coal to offset the \$3,947,465 coal inventory value within the AAO.¹³⁷

¹³¹ Emery Surrebuttal, Ex. 8, Page 31, Lines 7-18.

¹³² Transcript, Vol. 2, Page 110, Lines 1-10.

¹³³ Emery Surrebuttal, Ex. 8, Page 31, Lines 16-18.

¹³⁴ Emery Surrebuttal, Ex. 8, Page 31, Line 1.

¹³⁵ Riley Rebuttal, Ex. 208, Pages 11-12, Lines 23-25, 1-2.

¹³⁶ McMellen Surrebuttal, Ex. 101, Page 3, Lines 3-7.

¹³⁷ McMellen Surrebuttal, Ex. 101, Page 2, Lines 6-7.

Conclusions of Law

KK. Energy transition costs as defined at Section 393.1700.1(7)(a) include “the undepreciated investment in the retired or abandoned ... electric generating facility and any facilities ancillary thereto or used in conjunction therewith.”

Decision

There was no usable coal supply at Asbury at the commencement of the AAO tracker, but the unusable basemat coal was still there. The basemat coal was acquired by Liberty over the years and was included in the company’s rate base along with the rest of its coal pile inventory. It would have recovered the value of that coal as an expense when the coal was burned. But, since the basemat coal was never burned, Liberty never recovered its cost. Consequently, the value of the basemat coal, \$1,532,832, falls within the statutory definition of energy transition costs and may be securitized.

H) What are the values of the Accumulated Deferred Income Tax (ADIT) and Excess ADIT?

Findings of Fact ADIT

106. The amounts calculated for the level of ADIT will vary depending upon the starting point of the calculated Asbury Energy Transition Cost Balance.¹³⁸

107. Staff’s witness, Kimberly K. Bolin, who is an accountant and serves as Director of the Financial and Business Analysis Division for the Commission, calculated a net present value of Liberty’s ADIT offset of \$17,134,363.

108. Bolin credibly explained that Liberty’s calculation of the net present value of its ADIT offset effectively and inappropriately discounted the ADIT twice by discounting

¹³⁸ Bolin Rebuttal, Ex. 102, Page 10, Lines 16-22.

the yearly amounts related to the remaining balance of ADIT, and then discounting the sum of the yearly amounts again.¹³⁹

109. Public Counsel's witness, John S. Riley, testified that in his "uninformed"¹⁴⁰ opinion the requirements of the securitization statute are not applicable at this time.¹⁴¹

110. Until all inputs, including the interest rates that the securitized bonds will carry, are determined, it is not possible to calculate the exact amount of ADIT offset at this time.¹⁴²

Excess ADIT

111. Excess ADIT represents an amount to be returned to customers as established in Liberty's 2019 rate case, ER-2019-0374. That offset should reflect the value established in that case reduced by the customer collections received for that amount while rates established by that case were in effect, a period between September 16, 2020 and June 1, 2022.¹⁴³

112. Staff and Liberty agree that the Excess ADIT offset should be \$12,313,459.¹⁴⁴

113. Public Counsel proposed that the Excess ADIT offset should be \$16,934,393, which is the amount established in ER-2019-0374 without any adjustment for amounts collected in the rates established in that rate case. Public Counsel asserts

¹³⁹ Bolin Rebuttal, Ex. 102, Page 11, Lines 10-14.

¹⁴⁰ Riley testified that "I see this recalculation as a confiscatory act, but that is my uninformed opinion as I have not sought the advice of counsel regarding what this new law requires or allows". Riley Rebuttal, Ex. 208, Page 13, Lines 6-8.

¹⁴¹ Riley Rebuttal, Ex. 208, Page 13, Lines 6-10.

¹⁴² Transcript, Vol. 3, Page 236, Lines 4-9.

¹⁴³ Bolin Surrebuttal, Ex. 103, Page 4, Lines 15-22.

¹⁴⁴ Bolin Rebuttal, Ex. 102, Page 12, Lines 6-8. See also, Transcript, Vol 3, Page 237, Lines 6-8.

that “[o]nce the plant associated with the deferred taxes is retired, the clock stops on the deferred taxes as well.” Public Counsel cites no authority for that statement.¹⁴⁵

Conclusions of Law

LL. Section 393.1700.2(3)(c)m requires a financing order to include:

[A] procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that could otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

This provision ensures that ADIT and Excess ADIT are excluded from Liberty’s ratebase in future general rate cases. Thus, ratepayers no longer benefit from the ADIT and Excess ADIT balance in future rate cases after receiving a credit for those balances in this securitization case.

Decision

The ADIT offset to the Asbury Energy Transition Cost balance is properly calculated using the methodology used by Staff witness Kim Bolin. Public Counsel’s witness proposes to simply ignore the requirements of the statute, and the Commission finds his testimony to be not credible.

¹⁴⁵ Riley Rebuttal, Ex. 208, Page 14, Lines 8-12.

The Excess ADIT offset is \$12,313,459. Public Counsel's suggestion that the Excess ADIT amount established in ER-2019-0374 should not be adjusted by the amounts collected in the rates established in that case is not supported by the law or the facts.

I) What is the value of the Asbury AAO regulatory liability?

Findings of Fact

114. When Asbury ceased generating power the costs associated with operating it had been included in the rates established in Liberty's 2019 general rate case, ER-2019-0374. The financial impact of the closure was unknown at that time so a stipulation and agreement approved by the Commission listed specific rate elements that were to be tracked by Liberty to reflect the impact of the closure of Asbury, beginning January 1, 2020.¹⁴⁶

115. The rate components included in the AAO liability are the return on the unrecovered Asbury investment, depreciation expense, all non-fuel/non-labor operating and maintenance expenses, property taxes, and non-labor Asbury retirement/decommissioning costs.¹⁴⁷

116. The return on the Asbury component of the regulatory liability should be used to offset Liberty's net balance of costs to be securitized. Including that component recognizes that Liberty's customers have been paying a full return on Asbury in rates since the unit was effectively retired in December 2019, and that amount should be returned to customers.¹⁴⁸

¹⁴⁶ McMellen Rebuttal, Ex. 100, Pages 8-9, Lines 21-23, 1-2.

¹⁴⁷ McMellen Rebuttal, Ex. 100, Page 9, Lines 5-7.

¹⁴⁸ McMellen Rebuttal, Ex. 100, Page 9, Lines 13-20.

117. Public Counsel challenged Liberty's calculation of the amount of property taxes to be included in the AAO regulatory liability. Public Counsel contended three full years of taxes should be included in the calculation, even though recovery from ratepayers for those taxes only occurred for 29 months during the pendency of the rates established in ER-2019-0374.¹⁴⁹ Public Counsel abandoned this position in its initial brief and now accepts the amount of taxes calculated by Liberty.¹⁵⁰

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

This issue is largely a determination of a number to be used to offset a portion of the Asbury related energy transition cost balance to reflect the costs that were recovered from ratepayers after the unit was closed. The number will be impacted by resolution of several other issues addressed in this order. Based on the decisions made regarding those other issues, the value of the Asbury AAO regulatory liability is \$78,691,414.

J) What are the likely Asbury decommissioning costs?

Findings of Fact

118. Although Asbury is closed, Liberty is still working to decommission and dismantle the plant.¹⁵¹

119. Liberty developed a three-phase plan for final disposition of the Asbury facility. Phase 1 was a study phase, Phase 2 includes development of work plans, schedules, engineering plans and specifications, etc., concluding with bid documents for

¹⁴⁹ Riley Rebuttal, Ex. 208, Pages 18-19, Lines 23-25, 1-2.

¹⁵⁰ The Office of the Public Counsel's Initial Brief, Page 28.

¹⁵¹ Landoll Direct, Ex. 13, Page 5, Lines 19-20.

the demolition of the selected facilities. Phase 3 is planned to include finalization of bid documents, revision of cost estimates, bid administration, construction management, demolition of the facilities, reporting, and project accounting. Phase 3 is tentatively scheduled to be completed in 2024.¹⁵²

120. Liberty provided estimates of costs for Phase 2 and Phase 3.¹⁵³ Those estimates are \$4 million for Phase 2 (\$3,541,054 Missouri jurisdictional) and \$6.4 million in direct costs (\$5,665,687 Missouri jurisdictional) for Phase 3.¹⁵⁴

121. Liberty's cost estimates for Phase 3 do not include a salvage value that Liberty will receive for the demolished assets.¹⁵⁵

122. Staff proposes to include \$4 million for Phase 2 costs, but would partially offset the Phase 3 costs with the salvage value estimated in a study prepared by Black & Veatch.¹⁵⁶

123. Liberty does not necessarily oppose inclusion of salvage value, but suggests it may be more beneficial to ratepayers to not include the salvage value in the securitization bond amount and instead allow for its recovery in a future rate case.¹⁵⁷

124. Public Counsel proposed to include \$5,665,687 (Missouri jurisdictional) for Phase 3, offset by the salvage value. Or in the alternative, Public Counsel would exclude Phase 3 costs entirely.¹⁵⁸

¹⁵² Landoll Direct, Ex. 13, Pages. 9-10, Lines 19-24, 1-14.

¹⁵³ Landoll Direct, Ex. 13, Page 15, Lines 10-11.

¹⁵⁴ Emery Surrebuttal, Ex. 8, Schedule CTE-2 Asbury.

¹⁵⁵ Bolin Rebuttal, Ex. 102, Page 8, Lines 2-3.

¹⁵⁶ Bolin Rebuttal, Ex. 102, Page 8, Lines 6-7. The number used by Staff is confidential, but it can be found in Black & Veatch's report, which is found at Landoll Direct, Ex. 13, Schedule DWL-2, Page 8 of 9. See *also*, Landoll Surrebuttal, Ex. 14, Page 5, Lines 10-11.

¹⁵⁷ Emery Surrebuttal, Ex. 8, Page 13, Lines 9-18.

¹⁵⁸ The Office of the Public Counsel's Initial Brief, Page 26.

Conclusions of Law

MM. The definition of “energy transition costs” in Section 393.1700.1(7)(a) includes “costs of decommissioning and restoring the site of the electric generating facility.”

NN. Section 393.1700.2(3)(c)k, RSMo, requires that this order provide for a reconciliation process that would require Liberty to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized tariff costs incurred by the utility through a future rate case.

Decision

The numbers associated with this issue are only estimates for inclusion in the securitized costs. The actual costs will be reconciled in a future rate case. There is no disagreement among the parties about inclusion of the estimated decommissioning costs for Phase 2. The only disagreement about Phase 3 decommissioning costs is whether to partially offset those anticipated costs with anticipated salvage proceeds. The Commission finds that it is appropriate to offset the estimated decommissioning costs with the anticipated salvage proceeds rather than waiting to credit those proceeds to ratepayers in a future rate case. If not offset, the Commission would be asking ratepayers to pay now for money Liberty may not spend for several years, but would be making them wait until a future rate case to have the salvage proceeds credited to them.

K) What are the likely Asbury retirement obligations?

Findings of Fact

125. An Asset Retirement Obligation (ARO) is an obligation, legal or non-legal, associated with the retirement of a tangible long-lived asset for the cost of returning a

piece of property to its original condition. AROs can be recognized either when the asset is placed in service or during its operational life when its removal obligation is incurred.¹⁵⁹

126. Liberty included AROs in the total amount of \$21,282,684 (Missouri jurisdictional) for asbestos removal and coal combustion residuals impoundment in its proposed securitization balance for the retirement of Asbury.¹⁶⁰

127. Staff initially opposed inclusion of either the asbestos or the coal combustion residuals ARO in the securitization balance. However, after reviewing the surrebuttal testimony of Liberty, Staff agreed that Liberty should be allowed to include an ARO for the coal combustion residuals in the amount of \$16,995,561.¹⁶¹

128. The AROs are estimates of future costs. Any variance from actual costs incurred will be tracked by Liberty and reconciled in a future rate case.¹⁶²

129. Inclusion of the AROs in the securitization balance will benefit ratepayers in that if Liberty recovered these costs through traditional ratemaking it would also recover carrying costs until the time of recovery.¹⁶³

Conclusions of Law

The conclusions of law for this issue are the same as for issue 3J and will not be repeated.

Decision

Staff and Public Counsel continue to oppose inclusion of the ARO for asbestos removal, arguing that the amount of the ARO has not been properly documented.

¹⁵⁹ Bolin Rebuttal, Ex. 102, Page 9, Lines 8-11.

¹⁶⁰ Emery Surrebuttal, Ex. 8, Schedule CTE-2 Asbury.

¹⁶¹ Transcript, Vol. 3, Page 231, Lines 17-21.

¹⁶² Emery Surrebuttal, Ex. 8, Pages 12-13, Lines 23-24, 1-4.

¹⁶³ Emery Surrebuttal, Ex. 8, Page 12, Lines 9-16.

However, the estimates and the actual costs incurred will be reconciled, and allowing Liberty to recover these costs through securitization will reduce the amount that would be paid by ratepayers if they are not securitized. The Commission will allow Liberty to include AROs totaling \$21,282,684 within its securitization balance.

L) What is the appropriate amount for Cash Working Capital?

Findings of Fact

130. The Commission's order in Liberty's 2019 rate case that established an AAO directed Liberty to track the monthly impact of Asbury's retirement on cash working capital.¹⁶⁴

131. Since Liberty did not have an authorized cash working capital amount specific to Asbury, it made a reasonable estimate by taking the Asbury baseline revenue requirement amounts and determining what percentage it was of the total base rate revenue requirement amount authorized in that prior rate case. Liberty then applied that percentage to the total amount of cash working capital approved in that rate case to determine the amount of cash working capital in base rates that was associated with Asbury.¹⁶⁵

132. Public Counsel's witness, John S. Riley, calculated a cash working capital amount by making multiple assumptions and adjustment to calculate a new cash working capital value for the retired Asbury plant.¹⁶⁶

¹⁶⁴ Emery Surrebuttal, Ex. 8, Pages 29-30, Lines 24, 1-2.

¹⁶⁵ Emery Surrebuttal, Ex. 8, Page 30, Lines 2-9.

¹⁶⁶ Riley Rebuttal, Ex. 208, Page 8, Lines 1-20.

133. Public Counsel's calculation of cash working capital is inappropriate in that it does not factor in what Liberty's customers were actually paying for cash working capital related to Asbury during the period covered by the AAO.¹⁶⁷

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The AAO that directed Liberty to track the costs associated with the retirement of Asbury was intended to allow future rate adjustments to compensate ratepayers for costs included in rates to pay for operation of the closed Asbury plant. For that reason, the calculation of the cash working capital associated with Asbury must take into account the actual amounts paid by ratepayers and should not be an attempt to recalculate a hypothetical cash working capital amount for the closed plant as was performed by Public Counsel's witness. The Commission finds that the amount of cash working capital calculated by Liberty and accepted by Staff is appropriate.

M) Should Liberty's recovery reflect a disallowance of the remaining cost of the Air Quality Control System (AQCS), and if so, how much?

Findings of Fact

134. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions at a cost of \$33 million.¹⁶⁸ In 2014, the Asbury plant was retrofitted with an AQCS to comply with the federal Mercury Air Toxic Standards and the Cross State Air Pollution Rule.¹⁶⁹

¹⁶⁷ Emery Surrebuttal, Ex. 8, Page 30, Lines 9-11.

¹⁶⁸ Graves Direct, Ex. 16, Page 6, Lines 8-9.

¹⁶⁹ Landoll Direct, Ex. 13, Page 4, Lines 11-20.

135. The AQCS included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. The upgraded steam turbine increased nominal output of the unit to 218 MW.¹⁷⁰

136. The AQCS cost \$141 million in 2014.¹⁷¹

137. Asbury was de-designated from the SPP and officially retired in March of 2020.¹⁷²

138. Both the selective catalytic reduction system and the AQCS were reviewed by the Commission and allowed into Liberty's rate base.¹⁷³ Together, these systems account for 73 percent of Liberty's total undepreciated investment in Asbury.¹⁷⁴

139. Public Counsel did not challenge the prudence of Liberty's decision to invest in the AQCS and other environmental upgrades at the time and does not challenge the prudence of that decision now.¹⁷⁵

140. Public Counsel challenges Liberty's recovery of the costs of the AQCS on principles of "used and useful", matters of equity and fairness, and because the retirement was entirely the result of actions taken by Liberty's management from the excess capacity it momentarily created.¹⁷⁶

¹⁷⁰ Landoll Direct, Ex. 13, Page 4, Lines 15-20.

¹⁷¹ Graves Direct, Ex. 16, Page 6, Line 10.

¹⁷² Landoll Direct, Ex. 13, Page 5, Lines 15-17.

¹⁷³ Graves Direct, Ex. 16, Page 6, Lines 17-18.

¹⁷⁴ Graves Direct, Ex. 16, Pages 6-7, Lines 22, 1-2.

¹⁷⁵ Marke Rebuttal, Ex. 204, Page 8, Lines 8-10.

¹⁷⁶ Marke Rebuttal, Ex. 204, Page 45, Lines 14-18.

Conclusions of Law

OO. The definition of “Energy Transition Costs” found in Section 393.1700.1(7)(a) specifically states that such costs include the “undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith ...” That means such costs can be recovered through securitization even if a plant was retired or abandoned before its cost was fully depreciated because of an early retirement.

Decision

The Commission has previously determined that Liberty’s decision to retire Asbury was prudent (see issue 3E). This issue is just a statement of the means by which Public Counsel asks the Commission to remedy the alleged imprudence of the decision to retire Asbury. As such, there is no need for the Commission to revisit that decision. Consistent with its decision in issue 3E, the Commission will not disallow the remaining cost of the AQCS.

N) Should Liberty’s recovery reflect a disallowance for income tax deductions for Asbury abandonment?

Findings of Fact

141. Public Counsel asserts that Liberty has enjoyed a tax benefit because it wrote-off Asbury in 2020 and the last three months of 2019. Public Counsel asserts this is a benefit directly associated with the retirement of Asbury and should be included in the AAO totals established to track the costs associated with that retirement. Public Counsel calculated a tax benefit of \$16.5 million, which it applied to the AAO liability.¹⁷⁷

¹⁷⁷ Riley Rebuttal, Ex. 208, Page 19, Lines 7-16.

142. This tax benefit is a normal timing item that is treated the same as any ADIT item in rates. A regulatory asset was established for the net book value of Asbury. This regulatory asset has deferred taxes associated with it. As this regulatory asset gets amortized, the amortization expense is added back for taxable income purposes with no corresponding tax deduction because Asbury qualified as an abandonment for tax purposes already.¹⁷⁸

Conclusions of Law

PP. Section 393.1700.2(3)(c)m requires a financing order to include:

[A] procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that could otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

Decision

Public Counsel's proposed disallowance for income tax deductions for Asbury abandonment is unnecessary and will not be imposed.

¹⁷⁸ Emery Surrebuttal, Ex. 8, Page 37, Lines 1-12.

O) Should Liberty's recovery reflect a disallowance for labor at Asbury?

Findings of Fact

143. In the 2019 rate case, ratepayers funded labor expenses at Asbury that were not incurred after the plant was closed. That expense was tracked in the AAO and Public Counsel argues those costs should be included in the amount of the AAO offset to securitized costs.¹⁷⁹ Public Counsel calculated the amount of the proposed disallowance as \$6,988,710.¹⁸⁰

144. All Asbury employees were retained and were either transferred to other departments within the company or stayed at Asbury to work on the decommissioning.¹⁸¹ These employees filled positions elsewhere at Liberty that were needed to provide safe and adequate service to ratepayers.¹⁸²

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The labor costs identified by Public Counsel were not spent to provide service to ratepayers at an operating Asbury plant. But those costs were still used to provide service to those ratepayers through other operations of Liberty. Public Counsel's proposed disallowance for labor at Asbury is unnecessary and will not be imposed.

¹⁷⁹ Riley Rebuttal, Ex. 208, Page 18, Lines 7-14.

¹⁸⁰ Riley Surrebuttal, Ex. 209, Schedule JSR-S-01, Page 2.

¹⁸¹ Emery Surrebuttal, Ex. 8, Page 36, Lines 6-8.

¹⁸² McMellen Surrebuttal, Ex. 101, Page 4, Lines 2-5.

P) Should Liberty's recovery include amounts for abandoned environmental capital projects?

Findings of Fact

145. In addition to the net retired plant balance for the Asbury plant, Liberty included in its proposed securitization balance the amount of \$1,673,601 in costs related to two Asbury environmental projects that were abandoned when the plant was closed. These costs were included in both construction work in progress (CWIP) and removal work in progress (RWIP) accounts.¹⁸³

146. Public Counsel's witness, John S. Riley, contends these amounts are CWIP that was abandoned and should be excluded from Liberty's recovery by authority of Section 393.135, RSMo.¹⁸⁴

Conclusions of Law

QQ. Section 393.135, RSMo, 2016 states:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

RR. The Missouri Supreme Court has held that Section 393.135, RSMo, 2016 does not "have the purpose, and does not have the effect, of divesting the Commission of the authority to make any allowance at all on account of construction which is definitely **abandoned**."¹⁸⁵

¹⁸³ Emery Surrebuttal, Ex. 8, Page 26, Lines 3-6.

¹⁸⁴ Riley Rebuttal, Ex. 208, Page 6, Lines 5-10.

¹⁸⁵ *State ex rel. Union Elec. Co. v. Pub. Serv. Com'n*, 687 S.W.2d 162, 168 (Mo. banc 1985). (emphasis in original).

SS. The Missouri Court of Appeals has held that “the utility property upon which a rate of return can be earned must be utilized to provide service to customers. That is, it must be used and useful.”¹⁸⁶

TT. The fact that a cost item is no longer used and useful does not prevent a utility from recovering the cost of that item so long as it is not seeking to earn a return on that investment.¹⁸⁷

UU. Energy transition costs as defined at Section 393.1700.1(7)(a) include “the undepreciated investment in the retired or abandoned ... electric generating facility and any facilities ancillary thereto or used in conjunction therewith.”

Decision

The cost of the abandoned environmental projects at Asbury meet the definition of energy transition costs as defined by the securitization statute. As such those costs may be recovered through securitization. However, those costs would not be includible in Liberty’s ratebase and thus it may not recover a return on those investments

Q) Should Liberty’s recovery include basemat coal at Asbury?

This issue was previously considered and resolved along with issue 3G.

¹⁸⁶ *State ex rel. Union Elec. Co. v. Pub. Serv. Com’s of State of Mo.* 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).

¹⁸⁷ *State ex rel. Missouri Office of Pub. Counsel v. Pub. Serv. Com’n*, 293 S.W.3d 63 (Mo. App. S.D. 2009_

R) Should Liberty's recovery include non-labor Asbury retirement costs?**Findings of Fact**

147. Liberty and Staff included \$3,936,502 in the AAO balance as non-labor Asbury Retirement Decommissioning Costs. Liberty was ordered to track those costs in Liberty's 2019 rate case, ER-2019-0374.¹⁸⁸

148. Public Counsel did not challenge the number, but offered an opinion that the costs should not be included in the final AAO calculation, but should instead be addressed in Liberty's next general rate case.¹⁸⁹

Conclusions of Law

VV. The definition of "energy transition costs" in Section 393.1700.1(7)(a) includes "costs of decommissioning and restoring the site of the electric generating facility."

Decision

The non-labor Asbury retirement costs fall within the statutory definition of energy transition costs that may be recovered through securitization. Other than a bare statement, Public Counsel has not offered any explanation of why they should not be recovered in that manner. The Commission will allow these costs to be recovered through securitization.

S) What is the amount of depreciation expense?**Findings of Fact**

149. In Liberty's 2019 rate case, ER-2019-0374, the Commission ordered Liberty to establish an AAO to track costs associated with the recently closed Asbury plant.

¹⁸⁸ Emery Surrebuttal, Ex. 8, Page 36, Lines 18-23.

¹⁸⁹ Riley Surrebuttal, Ex, 209, Page 6, Lines 9-13.

Among the items to be tracked was accumulated depreciation, starting January 1, 2020.¹⁹⁰

150. Staff calculated accumulated depreciation for that period as (\$24,349,929.)¹⁹¹

151. Liberty calculated the amount of depreciation expense to be included in the Asbury regulatory liability to be (\$23,480,289).¹⁹²

152. Asbury's last day of generating power was December 12, 2019, when its coal supply was exhausted.¹⁹³

153. Asbury was officially retired on March 1, 2020, after Liberty notified SPP of the planned retirement.¹⁹⁴

154. Staff included January and February 2020 Asbury costs and benefits in its calculations of the Asbury AAO asset and liability.¹⁹⁵

155. Public Counsel calculated depreciation using Staff's depreciation rates from Liberty's 2019 rate case of \$11,179,375 per year, less the remaining plant expense established in the 2021 case of \$314,035 per year. The result is \$10,865,340 per year. Taking the monthly average and extending it out for 30 months provides a total depreciation expense for the AAO period of \$27,163,350.¹⁹⁶

156. Public Counsel's calculation improperly utilizes the remaining plant balance established in the 2021 rate case, which does not represent the amount embedded in the

¹⁹⁰ Emery Direct, Ex 7, Page 6, Lines 6-24.

¹⁹¹ Ex. 113, Page 3, Line 14, Column f and Ex. 116, Page 2, Line 14.

¹⁹² Emery Surrebuttal, Ex. 8, Page 36, Lines 9-16. Ex 21, Schedule CTE-6

¹⁹³ Mantle Rebuttal, Ex. 200, Page 19, Footnote 13.

¹⁹⁴ Doll Surrebuttal, Ex. 4, Page 4, Lines 19-22.

¹⁹⁵ McMellen Rebuttal, Ex. 100, Page 6, Lines 13-14.

¹⁹⁶ Riley Rebuttal, Ex. 208, Pages 17-18, Lines 22-24-1-2.

rates established in the 2019 rate case that were the basis for the AAO.¹⁹⁷ In addition, the period of the AAO was from January 1, 2020 through May 2022, a period of 29, not 30 months.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission finds that Asbury was effectively retired in December 2019, when it ceased producing electricity. Therefore, Staff's calculation of depreciation, which includes the months of January and February 2020, is appropriate and is adopted.

T) What are the appropriate carrying costs for Asbury?

U) What is the appropriate rate(s) of return that should be used to calculate the amount of recovery?

These two issues are closely related and will be addressed together.

Findings of Fact

157. Liberty proposes to include within the energy transition costs to be recovered through securitization carrying charges based on its WACC, which the Commission set at 6.77 percent in Liberty's 2019 rate case, File No. ER-2019-0374.¹⁹⁸ Liberty contends those carrying charges should be recovered for the period after the property was retired through the issuance of the securitized bonds.¹⁹⁹

158. Staff agrees that Liberty should be allowed to recovery carrying costs, but contends recovery at Liberty's long-term debt rate of 4.65 percent is more appropriate for

¹⁹⁷ Emery Surrebuttal, Ex. 8, Page 36, Lines 13-16.

¹⁹⁸ Emery Direct, Page 15, lines 11-13.

¹⁹⁹ Emery Surrebuttal, Page 20, Lines 17-19.

the relatively short period of time the carrying costs would be applied. Staff proposes that the carrying costs be allowed only beginning in May 2022 until the issuance of the securitized bonds.²⁰⁰

159. Public Counsel proposes that Liberty should not be allowed any carrying costs on Asbury undepreciated assets.²⁰¹

Conclusions of Law

WW. The definition of “energy transition costs” found in Section 393.1700.1(7)(a) RSMo, includes “accrued carrying charges” as a cost that may be recovered.

XX. Section 393.1700.2(3)(c)a RSMo, requires that a financing order issued by the Commission include a finding that recovery of securitized utility tariff costs to be financed using securitized utility tariff bonds is “just and reasonable”.

YY. In a 1988 case, the Missouri Court of Appeals upheld a Commission decision to deny rate recovery of \$106.3 million for cancellation costs related to the abandoned Callaway II nuclear plant. The Commission had found that such cancellation costs were not a just and reasonable expense to be placed in rates and charged to ratepayers. In upholding the Commission’s decision, the Court of Appeals held that “the utility property upon which a rate of return can be earned must be utilized to provide service to customers. That is, it must be used and useful.”²⁰²

Decision

There are three issues to be resolved. The first is whether Liberty should be allowed to include any carrying costs within its securitization. The second is the rate of

²⁰⁰ McMellen Rebuttal, Ex. 100, Page 8, Lines 1-3.

²⁰¹ Murray Rebuttal, Ex. 206, Page 9, Lines 1-11.

²⁰² *State ex rel. Union Elec. Co. v. Pub. Serv. Com’s of State of Mo.* 765 S.W.2d 618, 622 (Mo. App. W.D. 1988).

return that should be applied to any allowed carrying costs. The third is a determination of the period for which carrying costs will be recovered through the securitization.

As the Commission has concluded above, Missouri law generally holds that for a utility to be able to recover a return on a property, that property must be used and useful. However, the securitization statute specifically includes carrying costs within the definition of energy transition costs that can be recovered through securitization. Nevertheless, nothing in the statute defines carrying costs or mandates that they be included for recovery through securitization. Further, the securitization statute also requires the Commission find that the amount to be securitized is just and reasonable.

Here, Liberty is seeking to recover its full carrying costs on a generation facility that has not been used and useful since its effective retirement in December 2019. The Commission finds that such full recovery is not just and reasonable. Under these circumstances a more limited recovery of carrying costs for the period after the Asbury plant was removed from Liberty's rates, beginning in June 2022 is just and reasonable.

For the same reason, the Commission finds it just and reasonable to allow Liberty to recover those carrying costs at its 4.65 percent cost of long-term debt rather than at its WACC.

V) What is the appropriate discount rate to use to calculate the net present value of Asbury costs that would be recovered through traditional ratemaking?

Findings of Fact

160. Liberty uses its WACC of 6.77 percent to calculate the net present value of Asbury cost that would be recovered through traditional rate making.²⁰³

²⁰³ Emery Direct, Ex. 7, Page 20, Lines 1-9.

161. Staff concurred in the use of Liberty's WACC of 6.77 percent to make that comparison.²⁰⁴

162. Public Counsel argues the comparison should be made using a discount rate based on the bond rate on the securitized bonds. This comparison would show little value to the securitization.²⁰⁵

Conclusions of Law

ZZ. Section 393.1700.2(1)(f) requires an applicant for authority to securitize energy transition costs to include in their application:

A comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers. This comparison should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers.

Liberty fulfilled this legal requirement and its net present value comparison showed a benefit to customers of approximately \$48.3 million.²⁰⁶

AAA. Section 393.1700.2(2)(e) imposes a similar requirement on an applicant for authority to securitize qualified extraordinary costs. Liberty fulfilled this legal requirement and its net present value comparison showed a benefit to customers of approximately \$65.6 million.²⁰⁷

BBB. Section 393.1700.2(3)(c)b requires that this order include:

A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide

²⁰⁴ Davis Rebuttal, Ex. 107, Page 5, Lines 4-7.

²⁰⁵ Murray Rebuttal, Ex. 206, Page 15, Lines 1-14.

²⁰⁶ Emery Direct, Ex 7, Page 20, Line 8.

²⁰⁷ Hall Direct, Ex. 6, Page 10, Lines 6-7.

quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. ...

Decision

The purpose of the net present value comparison required by the statute is to estimate what, if any, savings will be delivered to customers if the securitization proceeds. To accomplish that purpose a reasonable discount rate should be used in the net present value calculation of the estimated costs for traditional financing absent securitization. Public Counsel's suggested discount rate would not result in a reasonable comparison and is rejected. The WACC of 6.77 percent suggested by Liberty and Staff is appropriate and is adopted.

4) What are the estimated upfront and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri and the energy transition costs associated with Asbury?

Findings of Fact

163. Liberty estimates that the upfront financing cost associated with securitizing the Winter Storm Uri costs is \$3,655,297, excluding the cost of the Commission's consultants. Liberty estimated the ongoing financing costs to be \$410,850 per year, or \$34,237 per month.²⁰⁸

164. Liberty estimates that the upfront financing costs associated with securitizing the Asbury costs is \$3,264,961, excluding the cost of the Commission's consultants. The ongoing financing costs for Asbury were estimated to be \$343,039 per year, or \$28,587 per month.²⁰⁹

²⁰⁸ Emery Surrebuttal, Ex. 8, Schedule CTE-1 Storm Uri.

²⁰⁹ Emery Surrebuttal, Ex. 8, Schedule CTE-1 Asbury.

165. Liberty is seeking to securitize only the upfront financing costs, not the ongoing financing costs.²¹⁰

166. It is customary to include upfront financing costs in the principal amount of securitized utility tariff bonds.²¹¹

167. Upfront and ongoing financing costs of securitization are comprised of a mix of costs that are fixed and less dependent on deal size and costs that are variable and tied to the size of the deal.²¹²

168. Considering that the Commission has ordered lower securitization amounts and will be issuing a single, combined financing order, the upfront financing costs should be somewhat lower than originally estimated by Liberty. Liberty estimates that upfront financing cost associated with consolidating the securitization of Asbury and Winter Storm Uri costs range from \$5.4 million to \$5.6 million, excluding the cost of the Commission's consultants.²¹³

169. Staff estimates that the costs of its consultants are approximately \$2.3 million.²¹⁴

170. Combined, Staff estimates total upfront financing costs of approximately \$6.2 million, plus approximately \$37,000 per month in on-going financing costs.²¹⁵

²¹⁰ Emery Surrebuttal, Ex 8, Schedule CTE-2

²¹¹ Davis Rebuttal, Ex. 107, Page 6, Lines 6-8.

²¹² Davis Rebuttal, Ex 107, Page 6, Lines 11-13.

²¹³ Ex. 24.

²¹⁴ Ex. 113.

²¹⁵ Davis Rebuttal, Ex 107, Schedule MD-1.

Conclusions of Law

CCC. Section 393.1700.2(3)(c)a RSMo, requires the Commission to include in its securitization order a description and estimate of the amount of financing costs that may be recovered through securitized utility tariff charges.

DDD. Section 393.1700.2(3)(c)e RSMo, requires the Commission to include in its securitization order:

A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and financing costs and other required amounts and charges payable under the securitized utility tariff bonds.

EEE. A list of items meeting the definition of “Financing Costs” is found at Section 393.1700.1(8) RSMo.

FFF. Section 393.1700.1(16) RSMo includes “financing costs” as items that may be included in a “securitized utility tariff charge.” Subsection 393.1700.1(16)(f) authorizes the Commission to employ financial advisors and legal counsel to assist it in processing a financing application and to include the associated costs as financing costs.

Decision

As previously concluded, the securitization statute requires only an estimate of financing costs. The final financing costs will not be known until the bonds are issued. The Commission will use Liberty’s estimate that reflects the benefits of consolidation in the amount of \$5.6 million for upfront financing costs plus Staff’s estimate of the upfront financing costs associated with their consultant in the amount of \$2.3 million for a total of

\$7.9 million in estimated upfront financing costs. The Commission will use approximately \$37,000 per month in ongoing financing costs.

5) Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

Findings of Fact

171. In its direct testimony, filed along with its application, Liberty calculated a benefit to customers from securitizing energy transition costs amounting to approximately \$48.3 million.²¹⁶

172. In its direct testimony, filed along with its application, Liberty calculated a benefit to customers from securitizing qualified extraordinary costs amounting to approximately \$65.6 million.²¹⁷

173. Staff concurred that in most of the scenarios it analyzed, customers will benefit from securitizing energy transition costs and qualified extraordinary costs, including benefits from consolidating securitization of those costs in a single bond offering.²¹⁸

Conclusions of Law

GGG. Section 393.1700.2(3)(c)b requires that this order include:

A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. ...

²¹⁶ Emery Direct, Ex. 7, Page 20, Line 8.

²¹⁷ Hall Direct, Ex. 6, Page 10, Lines 6-7.

²¹⁸ Ex. 118.

The statute does not require the order to include a quantification of the amount of savings. Rather, it simply requires a finding that there will be expected savings.

Decision

Based on the calculations prepared by Liberty and Staff, the Commission finds that the proposed issuance of securitized utility tariff bonds are expected to provide quantifiable net present value benefits to customers has compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. This conclusion remains true despite the Commission's decisions to use inputs that differ from those proposed by the parties, as demonstrated in the multiple scenarios described by Staff.

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri and Asbury through securitization?

Findings of Fact

174. The bond markets are continuing to change and as a result, the actual bond rates are not yet knowable and will likely change between now and when the bonds are issued. By the time of the hearing in June 2022, the expected weighted bond interest rate, which was 2.47 percent in January 2022, had risen to 4.28 percent.²¹⁹

175. Staff suggests the discount rate for Winter Storm Uri costs should also be evaluated based on the short-term or long-term cost of debt, and the discount rate for Asbury should be evaluated based on the authorized WACC of 6.77 percent, resulting in a weighted blended interest rate of 5.16 percent.²²⁰

²¹⁹ Transcript, Vol. 7, Pages 525-526, Lines 23-25, 1-21.

²²⁰ Ex. 118.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission finds that the weighted blended interest rate of 5.16 percent proposed by Staff is appropriate.

6) Regarding any designated staff representatives who may be advised by a financial advisor or advisors, what provision or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)(h)?

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo (Supp. 2021), to be included in the financing order?

Findings of Fact

176. Many details about the securitization bonds are not yet known and will not be known until the bonds are ready to be issued. The Commission needs to ensure that the securitization will likely provide quantifiable net present value to the benefit of the utility's customers. As a result, review and input from the Commission's Staff of the details of the securitization, as well as their collaboration with Liberty, is essential.²²¹

177. The securitization statute does allow the Commission to reject the securitization by disapproving the issuance advice letter just before the bonds are issued, but that would be a drastic action with material capital market implications. Thus, there is a need for Staff to be able to be involved in the process and to regularly update the Commission and transmit feedback as necessary.²²²

178. Staff's involvement in the structuring, marketing, and pricing phase on behalf of the Commission is important because the bond underwriters will not have any

²²¹ Davis Rebuttal, Ex. 107, Pages 7-8, Lines 18-22, 1-2.

²²² Davis Rebuttal, Ex. 107, Page 8, Lines 4-9.

fiduciary responsibility to protect the interests of customers.²²³ Similarly, the interests of the utility and the interests of the customers may not entirely align during the structuring, marketing, and pricing phase. As a result, it is important that the Commission have a seat at the table so it can protect customer's interests.²²⁴

179. The Commission must also be concerned about allowing the bond placement process to proceed without undue interference. The bond placing process must be quick moving and efficient to meet market expectations, so that potential investors do not choose to opt out of the process.²²⁵ In some situations, a decision will have to be made in a matter of minutes.²²⁶

180. In its proposed draft financing order, Staff included language creating what it termed a Finance Team, which would consist of one or more designated Staff representatives, financial advisors, and outside bond counsel. As proposed by Staff, such a Finance Team would be given authority to "review and approve" the securitized bonds and associated transactions. Further, the Finance Team would be allowed to "attend all meetings and participate in all calls, e-mails, and other communications relating to the structuring and pricing and issuance of the securitized utility tariff bonds."²²⁷

181. Liberty's witness, Goldman Sachs Managing Director and possible underwriter for the bonds, Katrina T. Niehaus, testified that she would be willing to work with a bond advisory team if directed to do so by the Commission.²²⁸ She further testified

²²³ Transcript, Vol. 7, Page 536, Lines 17-20.

²²⁴ Transcript, Vol. 7, Pages 595-596, Lines 14-25, 1-12.

²²⁵ Transcript, Vol. 7, Page 558-559, Lines 21-25, 1-7.

²²⁶ Transcript, Vol. 7, Page 569, Lines 16-24.

²²⁷ Draft Financing Order, Pages 7-8.

²²⁸ Transcript, Vol. 7, Page 553, Lines 9-24.

that she has worked with similar teams in the past and found them to be an effective way to alleviate concerns raised by staff or their financial advisors and to help them provide guidance to their commission.²²⁹

182. Liberty's witness, Michael Mosindy, pointed to one area of communications to which a Finance Team would not be able to participate. Communications with rating agencies are tightly controlled to comply with SEC rules. For that reason, communication with the ratings agencies will generally be limited to one person from Liberty and a representative from the lead underwriter.²³⁰ Staff's witness, Mark Davis, confirmed that practice²³¹ and indicated in that circumstance, Staff would receive access to the recorded calls.²³²

183. The applicable statutory provisions are designed to permit the bonds to be issued with triple-A ratings, using features generally consistent with precedent legislation enabling securitization of this type.²³³

Conclusions of Law

HHH. Section 393.1700.2(3)(h) RSMo, provides that before securitization bonds are issued, the electrical corporation is required to provide an "issuance advice letter" to the Commission describing the final terms of the bonds. The Commission is allowed only until noon on the fourth business day after it receives the issuance advice letter to issue a disapproval letter directing that the bond issuance as proposed should not proceed.

²²⁹ Transcript, Vol. 7, Page 562, Lines 12-25.

²³⁰ Mosindy Surrebuttal, Ex. 15, Page 7, Lines 7-13.

²³¹ Transcript, Vol. 7, Page 596, Lines 13-20.

²³² Transcript, Vol. 7, Pages 592-593, Lines 23-25, 1-9.

²³³ Niehaus Direct, Ex. 18, Page 9, Lines 14-16.

III. So that the Commission will have sufficient insight into the bond placing process to be able to evaluate the issuance advice letter in the short amount of time allowed, Section 393.1700.2(3)(h) RSMo, gives the Commission authority to:

designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis.

JJJ. Section 393.1700.2(3)(h) also expressly limits the authority of the Commission's representative or representatives, stating:

Neither the designated representative or representatives from the commission's staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market.

KKK. Importantly, Section 393.1700.2(3)(h) also allows the Commission to include provisions in the financing order "relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section."

LLL. Section 393.1700.2(3)(a)b contemplates that the Commission may issue a financing order approving the petition "subject to conditions."

MMM. Section 393.1700.2(3)(c)c requires a financing order to include:

A finding that the proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

Decision

The Commission is faced with the challenge of balancing the need to be informed and involved with the bond placement process with the need to allow that process to proceed without undue delay or interference. The Commission finds that the concept of a Finance Team as described by Staff as including one or more designated Staff representatives, financial advisors, and outside counsel, is appropriate and within the bounds set by the securitization statute. However, while that team should be allowed to be involved in the process, it does not have authority to “approve” that process. Under the statute, the Finance Team can be given authority to review the process, provide input about the process, collaborate in the process, and report its findings and concerns about the process to the Commission. It is then up to the Commission to approve or disapprove the bond issuance through the statutory bond issuance letter process.

Similarly, a requirement that the Finance Team be allowed to attend and participate in all meetings and other communications is problematic. One example, communications with ratings agencies, was described by Liberty, and there could be other examples as well. Fundamentally, a requirement that the Finance Team be allowed to participate in every communication would be unwieldy and could lead to delays that would hamper the bond placement process.

The Commission will create a Finance Team as proposed by Staff, but will limit the authority granted to that team as described below.

To ensure, as required by Sections 393.1700.2(3)(c)c and 393.1700.2(3)(h), that the structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff bond charges consistent with market conditions

and the terms of this Financing Order, the Commission designates a Finance Team consisting of designated Commission Staff representatives, financial advisors, and outside counsel to review, provide input, and collaborate on marketing and pricing of the securitized utility tariff bonds and the associated transaction documents. Any costs incurred by the Finance Team in connection with its review of the securitized utility tariff bonds shall be treated as financing costs. The Finance Team shall provide oversight over and input to the structuring and pricing of the securitized utility tariff bond transaction and review the material terms of the transaction to ensure the transaction provides quantifiable net present value benefits to customers compared to the use of traditional ratemaking and results in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced.

The Finance Team shall have the right to review, provide input, and collaborate on all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The pre-issuance review process will help ensure that the securitized

utility tariff bonds will be issued with material terms that meet the requirements of the Securitization Law. The Finance Team's review shall continue until the issuance advice letter is disapproved, approved, or takes effect by operation of law.

For the Commission to remain informed and updated throughout the pre-issuance review process, the Commission may require status meetings or phone conferences for the Finance Team and involved parties to communicate and update the Commission on the information being reviewed and prepared in the structuring and pricing process. The Commission may request access to the actual documents and information being reviewed by the Finance Team as needed. The Finance Team may submit written status reports to the Commission as the Finance Team deems appropriate or as requested by the Commission. If concerns arise during the process, such status meetings, conferences or updates can be requested by the Finance Team or other involved parties as needed.

No member of the Finance Team has authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings convened by Liberty, and participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.

In connection with the submission of the issuance advice letter, Liberty and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal

requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. Such certificates shall be a condition precedent to the submission of the issuance advice letter to the Commission.

In addition, the securitized tariff bonds issued in compliance with this Financing Order shall have a triple-A rating from at least two of the nationally recognized rating agencies.

8) How should securitized utility tariff charges be initially allocated among retail customer classes?

Findings of Fact

184. Based on the class revenue targets Liberty proposed in its most recent general rate case, it calculated the percentage of the company's total revenue requirement that would be contributed by each of Liberty's then existing rate classes and used the result to determine how much of the cost of the securitization bonds should be recovered from each class.²³⁴ MEEG supports Liberty's method of allocation based on cost of service principles.²³⁵

²³⁴ Emery Direct, Ex. 7, Page 23, Table CTE-5.

²³⁵ Initial Brief of Midwest Energy Consumers Group, Page 4.

185. This table shows the allocation percentage Liberty would assign to each of its rate classes:

Class	Allocation Percentage
Residential	45.02%
Commercial	9.05%
Small Heating	2.02%
General Power	18.01%
Transmission	1.08%
Total Electric Building	7.62%
Feed Mill	0.02%
Large Power	15.83%
Misc. Service	0.00%
Street Lighting	0.63%
Private Lighting	0.70%
Special Lighting	0.02%
Total	100%

186. The allocation factors listed by Liberty are no longer accurate in that they do not incorporate the revisions made in Liberty's most recent rate case. In addition, they do not allocate a share to Liberty's Electrical Vehicle customer class.²³⁶

187. Liberty's proposal to allocate costs among the various customer classes also creates problems related to rate switching. That is larger customers may attempt to

²³⁶ Lange Rebuttal, Ex. 108, Page 6, Lines 1-3.

switch service to a different rate class to obtain a lower bill. That could leave fewer customers in a particular rate class to cover the same allocation, encouraging more rate switching. That could lead to under-collection of amounts sufficient to service the debt.²³⁷

188. Staff takes a different approach and recommends that the Securitized Utility Tariff Charge for all customers be calculated on the basis of loss-adjusted energy sales. That approach would not require allocation among the various customer classes.²³⁸

189. If Liberty's Winter Storm Uri related qualified extraordinary costs had been recovered through Liberty's Fuel Adjustment Clause in the absence of a securitization option, those costs would have been allocated to Liberty's customers proportionate to the energy usage, adjusted for losses.²³⁹

190. The benefits derived from closing Asbury are expected to flow to customers through decreased net costs of participation in Southwest Power Pool's Integrated Market. Those benefits are allocated to customers through the fuel adjustment clause on the basis of loss-adjusted energy usage. Therefore, Liberty's Asbury related energy transition costs should also be allocated on the basis of energy usage, adjusted for losses.²⁴⁰

191. Customer classes with relatively high energy consumption per customer will be the biggest beneficiaries of both the reduced operating costs and the reduced costs of obtaining energy to serve load that results from the closing of Asbury. Therefore,

²³⁷ Lange Rebuttal, Ex. 108, Page 18, Lines 1-10.

²³⁸ Lange Rebuttal, Ex 108, Page 2. Lines 10-15.

²³⁹ Lange Rebuttal, Ex. 108, Page 32, Lines 7-10.

²⁴⁰ Luebbert, Rebuttal, Ex. 106, Page 3, Lines 5-12, and Lange Rebuttal, Ex. 108, Page 27, Lines 1-6.

apportioning the cost of the Asbury retirement consistent with how the benefit of closing Asbury and including wind generation to replace it is flowed to customers is reasonable.²⁴¹

Conclusions of Law

NNN. Section 393.1700.2(3))(c)h RSMo requires this securitization order to determine “how securitized utility tariff charges will be allocated among retail customer classes.”

OOO. The Commission has much discretion in determining the theory or method it uses in determining rates²⁴² and can make pragmatic adjustments called for by particular circumstances.²⁴³

PPP. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of fact. It has no claim to an exact science.”²⁴⁴

QQQ. The definition of “securitized utility tariff charge” found at Section 393.1700.1(16) indicates that such charges are nonbypassable.

Decision

Cost allocation to the various customer classes is an important issue for the Midwest Energy Consumers Group, which advocated strongly for the sort of class

²⁴¹ Lange Rebuttal, Ex. 108, Page 27, Lines 15-18.

²⁴² *State ex rel. Public Counsel v. Public Service Com’n*, 274 S.W.3d 569, 586 (Mo. App. 2009).

²⁴³ *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com’n* 795 S.W.2d 593, 597 (Mo. App. 1990)

²⁴⁴ *Spire Missouri, Inc. v. Missouri Public Service Com’n* 607 S.W.3d 759, 771 (Mo. App. 2020), quoting *National Ass’n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

allocation proposed by Liberty. Their concern is that Staff's proposal will result in higher rates for industrial customers who use a lot of energy per customer. Nevertheless, the Commission finds that Staff's proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.

Non-contested Issues

The Commission makes the following findings of fact.

A) Identification and Procedure

Identification of Petitioner and Background

192. The Empire District Electric Company d/b/a Liberty is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri. Liberty is qualified to conduct business and is conducting business in Missouri, as well as in the states of Arkansas, Kansas, and Oklahoma. Liberty is engaged, generally, in the business of generating, purchasing, transmitting, distributing, and selling electricity in portions of the referenced four states. Liberty's Missouri operations are subject to the jurisdiction of the Commission as provided by law.

B) Financing Costs and Amount of Securitized Utility Tariff Costs to be Financed

Identification

193. The proceeds from the sale of the securitized utility tariff property will be used by Liberty to recover the securitized utility tariff costs incurred by Liberty in response to the anomalous weather event Winter Storm Uri and in connection with retiring Asbury, including purchases of fuel or power, carrying charges, deferred legal expenses and upfront financing costs.

194. Liberty proposed that the securitized utility tariff charges related to the securitized utility tariff bonds will be recovered over a scheduled period of 13 years, but not more than 15 years from the date of issuance but that amounts due at or before the end of that period for securitized utility tariff charges allocable to the 15-year period may be collected after the conclusion of the 15-year period.

195. The proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order.

196. For so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under this Financing Order shall be nonbypassable and paid by all existing and future retail customers receiving electrical service from Liberty or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the State of Missouri. Liberty has no customers receiving electrical service under special contracts as of August 28, 2021.

197. The securitized utility tariff bonds will be secured by securitized utility tariff property that shall be created in favor of Liberty or its successors or assignees and that shall be used to pay or secure the securitized utility tariff bonds and approved financing costs. The securitized utility tariff property principally consists of the right to receive revenues from the securitized utility tariff charges.

198. It is appropriate that Liberty be authorized to establish the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs, except as expressly limited in this order. The Finance Team and the Commission will review the complete terms and conditions of the securitization utility tariff bonds, the calculations of the initial securitized utility tariff charges and the expected and actual financing costs set forth in the issuance advice letter.

199. After the final terms of the securitized utility tariff bonds have been established and before the issuance of such bonds, it is appropriate for Liberty to determine the resulting initial securitized utility tariff charge in accordance with this Financing Order, and that such initial charge be final and effective upon the issuance of such securitized utility tariff bonds with such charge to be reflected on a compliance tariff sheet bearing such charge.

200. Liberty proposed a method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property.

201. Liberty proposed that it shall earn a return, at the cost of capital authorized from time to time by the Commission in Liberty's rate proceedings, on any moneys advanced by Liberty to fund the capital subaccount established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility bonds.

202. It is appropriate that Liberty shall be authorized to issue securitized utility tariff bonds pursuant to this Financing Order for a period commencing with the date of this Financing Order and extending 24 months following the date on which this Financing

Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, it is appropriate for the effective period to be extended with the approval of the Commission to a date that is not less than 90 days after the date such disruption ends.

Issuance Advice Letter

203. As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time this Financing Order is issued, prior to the issuance of the securitized utility tariff bonds, Liberty will provide an issuance advice letter to the Commission following the determination of the final terms of the securitized utility tariff bonds no later than one day after the pricing of the securitized utility tariff bonds. The issuance advice letter will include total upfront financing costs for the issuance. The form of such issuance advice letter, which shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs, is set out in Appendix A to this Financing Order. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the Commission may require. The issuance advice letter shall demonstrate the ultimate amounts of quantifiable net present value savings. Liberty may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

204. If the actual upfront financing costs are less than the upfront financing costs included in the principal amount securitized, the periodic billing requirement, defined below, for the first annual true-up adjustment must be reduced by the amount of such unused funds (together with interest, if any, earned on the investment of such funds). If the actual upfront financing costs are more than the upfront financing costs included in the principal amount securitized, the periodic billing requirement for the first annual true-up adjustment may be increased by the amount of such unrecovered upfront financing costs.

C) Structure of the Proposed Securitization

BondCo

205. For purposes of issuing the securitized utility tariff bonds, Liberty will create a bankruptcy-remote special purpose entity (referred to as BondCo), which will be a Delaware limited liability company with Liberty as its sole member. BondCo will be formed for the limited purpose of acquiring securitized utility tariff property, issuing securitized utility tariff bonds in one or more tranches, and performing other activities relating thereto or otherwise authorized by this Financing Order. BondCo will not be permitted to engage in any other activities and will have no assets other than securitized utility tariff property and related assets to support its obligations under the securitized utility tariff bonds. Obligations relating to the securitized utility tariff bonds will be BondCo's only material liabilities. Liberty has proposed and the Commission has accepted that these restrictions on the activities of BondCo and restrictions on the ability of Liberty to take action on BondCo's behalf are imposed to achieve the objective that BondCo will be bankruptcy remote and not affected by a bankruptcy of Liberty or any of its successors. BondCo will

be managed by a board of directors or a board of managers with rights and duties similar to those of a board of directors of a corporation. As long as the securitized utility tariff bonds remain outstanding, BondCo will be overseen by at least one independent director or manager whose approval will be required for certain major actions or organizational changes by BondCo. BondCo will not be permitted to amend the provisions of the organizational documents that relate to bankruptcy-remoteness of BondCo without the consent of the independent directors or managers. BondCo will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent directors or managers. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of BondCo as required by the rating agencies.

206. The initial capital of BondCo is expected to be not less than 0.50% of the original principal amount of the securitized utility tariff bonds issued by BondCo. Adequate funding of BondCo at this level is intended to protect the bankruptcy remoteness of BondCo. A sufficient level of capital is necessary to minimize this risk and, therefore, assist in achieving the lowest securitized utility tariff charges possible.

Statutory Requirements

207. BondCo will issue the securitized utility tariff bonds consisting of one or more tranches. The aggregate amount of all tranches of the securitized utility tariff bonds issued under this Financing Order must not exceed the principal amount approved by this Financing Order. BondCo will pledge to the indenture trustee, as collateral for payment of the securitized utility tariff bonds, the securitized utility tariff property, including

BondCo's right to receive the securitized utility tariff charges as and when collected, and certain other collateral described herein.

208. Concurrent with the issuance of any of the securitized utility tariff bonds, Liberty will transfer to BondCo all of (a) Liberty's rights and interests under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds. This transfer will be structured so that it will qualify as a true sale within the meaning of Section 393.1700.5.(3) and that such rights will become securitized utility tariff property concurrently with their sale to BondCo as provided in Section 393.1700.2.(3)(d). By virtue of the transfer, BondCo will acquire all of the right, title, and interest of Liberty in the securitized utility tariff property arising under this Financing Order.

Credit Enhancement and Arrangements to Enhance Marketability

209. Liberty has requested permission to use credit enhancements and arrangements to enhance marketability if such credit enhancements are required by the rating agencies to achieve the highest possible credit rating on the securitized utility tariff bonds. If the use of credit enhancements, or other arrangements is proposed by Liberty, Liberty must provide the Finance Team copies of all cost-benefit analyses performed by

or for Liberty that support the request to use such arrangements. This finding does not apply to the collection account or its subaccounts approved in this Financing Order.

Securitized Utility Tariff Property

210. Securitized utility tariff property and all other collateral will be held and administered by the indenture trustee under the indenture.

Servicer and the Servicing Agreement

211. Liberty will enter into a servicing agreement with BondCo. The servicing agreement may be amended, renewed or replaced by another servicing agreement subject to certain conditions set forth therein. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. Liberty will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission. Under the servicing agreement, the servicer is required to, among other things, impose and collect the securitized utility tariff charges for the benefit and account of BondCo, make the periodic true-up adjustments of securitized utility tariff charges required or permitted by this Financing Order, and account for and remit the securitized utility tariff charges to or for the account of BondCo in accordance with the remittance procedures contained in the servicing agreement and the indenture without any charge, deduction or surcharge of any kind. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized utility tariff bonds, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized utility tariff bonds, must, appoint an alternate party

to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the servicing agreement. Any such servicer replacement must not cause the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement. The rights of BondCo under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized utility tariff bonds.

212. The obligations to continue to provide service and to collect and account for securitized utility tariff charges will be binding upon Liberty and any other entity that provides electrical services to a person that is a retail customer located within Liberty's Service Territory as it existed on the date of this Financing Order, or that became a retail customer for electric services within such area after the date of this Financing Order, and is still located within such area.

Securitized Utility Tariff Bonds

213. BondCo will issue and sell securitized utility tariff bonds consisting of one or more tranches. The legal final maturity date of the securitized utility tariff bonds will not exceed 15 years from the date of issuance. The legal final maturity date and principal amounts of each tranche will be finally determined by Liberty with input from the Finance Team, consistent with market conditions and indications of the rating agencies, at the time the securitized utility tariff bonds are priced, but subject to ultimate Commission review through the issuance advice letter process. Subject to the conditions and criteria set forth in this Financing Order, Liberty will retain sole discretion regarding whether or

when to assign, sell, or otherwise transfer any rights concerning securitized utility tariff property arising under this Financing Order, or to cause the issuance of any securitized utility tariff bonds authorized in this Financing Order, subject to the right of the Commission to issue a disapproval letter to the issuance advice letter. BondCo will issue the securitized utility tariff bonds on or after the fifth business day after pricing of the securitized utility tariff bonds unless, before noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

Security for Securitized Utility Tariff Bonds

214. The payment of the securitized utility tariff bonds and related charges authorized by this Financing Order is to be secured by the securitized utility tariff property created by this Financing Order and by certain other collateral as described herein. The securitized utility tariff bonds will be issued under an indenture administered by the indenture trustee. The indenture will include provisions for a collection account and subaccounts for the collection and administration of the securitized utility tariff charges and payment or funding of the principal and interest on the securitized utility tariff bonds and financing costs in connection with the securitized utility tariff bonds. In accordance with the indenture, BondCo will establish a collection account as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and financing costs approved in this Financing Order related to the securitized utility tariff bonds in full and on a timely basis. The collection account will include the general

subaccount, the capital subaccount, and the excess funds subaccount, and may include other subaccounts.

The General Subaccount

215. The indenture trustee will deposit the securitized utility tariff charge remittances that the servicer remits to the indenture trustee for the account of BondCo into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay principal of and interest on the securitized utility tariff bonds, to pay ongoing financing costs, and to meet the funding requirements of the other subaccounts. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement (as defined in finding of fact number 228), and otherwise in accordance with the terms of the indenture.

The Capital Subaccount

216. Liberty will make a capital contribution to BondCo, which BondCo will deposit into the capital subaccount. The amount of the capital contribution is expected to be not less than 0.50% of the original principal amount of the securitized utility tariff bonds, although the actual amount will depend on tax and rating agency requirements. The capital subaccount will serve as collateral to ensure timely payment of principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. Any funds drawn from the capital account to pay these amounts

due to a shortfall in the securitized utility tariff charge remittances will be replenished through future securitized utility tariff charge remittances. The funds in the capital subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including investment earnings) will be used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations that may be paid by use of securitized utility tariff charges, all amounts in the capital subaccount will be released to BondCo for payment to Liberty. Liberty will account for any recovery on earnings from its capital subaccount in a reconciliation in a future rate case to account for any capital subaccount earnings in excess of the rate of return already earned by Liberty in previous proceedings.

The Excess Funds Subaccount

217. The excess funds subaccount will hold any securitized utility tariff charge remittances and investment earnings on the collection account in excess of the amounts needed to pay current principal of and interest on the securitized utility tariff bonds and to pay other periodic payment requirements (including, but not limited to, replenishing the capital subaccount). Any balance in or allocated to the excess funds subaccount on a true-up adjustment date will be subtracted from the periodic billing requirement (as defined in finding of fact number 229) for purposes of the true-up adjustment. The money in the excess funds subaccount will be invested by the indenture trustee in short-term high-quality investments, and such money (including investment earnings thereon) will be

used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and other periodic payment requirements.

Other Subaccounts

218. Other credit enhancements in the form of subaccounts may be utilized for the transaction provided that the use of such subaccounts is consistent with the statutory requirements. For example, Liberty does not propose use of an overcollateralization subaccount. Under Rev.Proc. 2002-49, as modified, amplified and superseded by Rev. Proc. 2005-62 issued by the Internal Revenue Service (IRS), the use of an overcollateralization subaccount is not necessary for favorable tax treatment nor does it appear to be necessary to obtain AAA ratings for the proposed securitized utility tariff bonds. If Liberty subsequently determines in consultation with the Finance Team, however, that use of an overcollateralization subaccount or other subaccount are necessary to obtain AAA ratings or will otherwise increase the quantifiable benefits of the securitization, Liberty may implement such subaccounts to reduce securitized utility tariff bond charges.

General Provisions

219. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. If the amount of securitized utility tariff charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the securitized utility tariff bonds and to make payment on all of the other components of the periodic payment requirement, the excess funds subaccount and the capital subaccount

will be drawn down, in that order, to make those payments. Any deficiency in the capital subaccount due to such withdrawals must be replenished to the capital subaccount on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture. Upon the maturity of the securitized utility tariff bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital subaccount, will be released to BondCo and equivalent amounts will be credited by Liberty to customers. In addition, upon the maturity of the securitized utility tariff bonds any subsequently collected securitized utility tariff charges shall be distributed to retail customers.

Securitized Utility Tariff Charges—Imposition and Collection, Nonbypassability, and Alternative Electric Suppliers

220. If securitized utility tariff charges are collected by any third party billing servicer, such securitized utility tariff charges will be remitted to BondCo.

221. Securitized utility tariff charges will be identified on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill. Each customer bill shall include a statement to the effect that BondCo is the owner of the rights to securitized utility tariff charges and that Liberty is acting as servicer for BondCo. The tariff applicable to customers shall indicate the securitized utility tariff charge and the ownership of the charge.

222. If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, unless a customer is in a repayment plan under the Commission's Cold Weather Rule, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

223. Liberty will collect securitized utility tariff charges from all existing or future retail customers receiving electrical service from Liberty or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a change in regulation of public utilities in Missouri.

224. Liberty's proposal related to imposition and collection of securitized utility tariff charges is reasonable and is necessary to ensure collection of securitized utility tariff charges sufficient to support recovery of the securitized utility tariff costs and financing costs approved in this Financing Order. It is reasonable to require that Liberty's Securitized Utility Tariff Charge Rider SUTC, reflecting estimated charges, be filed before any securitized utility tariff bonds are issued under this Financing Order.

Allocation of Financing Costs Among Missouri Retail Customers

225. The periodic payment requirement is the required periodic payment for a given period (e.g., annually, semi-annually, or quarterly) due under the securitized utility tariff bonds. Each periodic payment requirement includes: (a) the principal amortization of the securitized utility tariff bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the securitized utility tariff bonds (including any accrued and unpaid

interest); and (c) ongoing financing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, and other ongoing fees and expenses. The initial periodic payment requirement for the securitized utility tariff bonds issued under this Financing Order should be updated in the issuance advice letter.

226. The periodic billing requirement represents the aggregate dollar amount of securitized utility tariff charges that must be billed during a given period (e.g., annually, semi- annually, or quarterly) so that the securitized utility tariff charge collections will be sufficient to meet the periodic payment requirement for that period, given: (i) forecast usage data for the period; (ii) forecast uncollectibles for the period; and (iii) forecast lags in collection of billed securitized utility tariff charges for the period.

True-Up of Securitized Utility Tariff Charges

227. Under Section 393.1700.2.(3)(c)e., the servicer of the securitized utility tariff bonds will use a formula-based true-up mechanism to make periodic, expeditious adjustments, at least annually, to the securitized utility tariff charges to:

- (a) correct any undercollections or overcollections that may have occurred and otherwise ensure that BondCo receives securitized utility tariff charges that are required to satisfy the debt service obligations, including without limitation any caused by defaults, during the preceding 12 months; and
- (b) ensure the billing of securitized utility tariff charges necessary to generate the collection of amounts sufficient to timely provide all payments of scheduled principal and interest and any other amounts due in connection with the securitized utility tariff bonds (including financing

costs and amounts required to be deposited in or allocated to any collection account or subaccount) during the period for which such adjusted securitized utility tariff charges are to be in effect.

The servicer will make true-up adjustment filings with the Commission annually, and if the servicer forecasts undercollections semi-annually.

228. True-up filings will be based upon the cumulative differences, regardless of the reason, between the periodic payment requirement (including scheduled principal and interest payments on the securitized utility tariff bonds) and the amount of securitized utility tariff charge remittances to the indenture trustee. To assure adequate securitized utility tariff charge revenues to fund the periodic payment requirement over the life of the securitized utility tariff bonds and to avoid overcollections and undercollections over time, the servicer will reconcile the securitized utility tariff charges using Liberty's most recent forecast of electricity deliveries (i.e., forecasted billing units) and estimates of transaction-related expenses. In the case of any adjustments occurring after the final scheduled payment date for the securitized utility tariff bonds, adjustments to the securitized utility tariff charges will be no less frequent than quarterly to correct for overcollections or undercollections by the earlier of the next bond payment date or the legal maturity date for the bonds. The calculation of the securitized utility tariff charges will also reflect both a projection of uncollectible securitized utility tariff charges and a projection of payment lags between the billing and collection of securitized utility tariff charges based upon Liberty's most recent experience regarding collection of securitized utility tariff charges.

229. The servicer will implement the true-up in the following manner, known as the standard true-up procedure:

- (a) The level of actual sales for the subject period will be netted from the forecasted sales for that same period;
- (b) Undercollections or overcollections will be determined by multiplying the result from Step (a) by the rate in effect for the same period; and
- (c) The resulting dollar amount will be incorporated as a component of the subsequent period's recovery period amount, to be allocated consistent with this Financing Order or subsequent final and unappealable Rate Case Report and Order, whichever is most recent.

Interim True-Up

230. In addition to annual true-up adjustments, true-up adjustments may be made by the servicer more frequently at any time during the term of the securitized utility tariff bonds to correct any undercollection or, as provided for in this Financing Order, in order to assure timely payment of securitized utility tariff bonds. Further, the servicer must make a mandatory interim true-up adjustment semi-annually (or quarterly beginning 12 months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds):

- (a) if the servicer forecasts that securitized utility tariff charge collections will be insufficient to make all scheduled payments of principal, interest, and other amounts in respect of the securitized utility tariff bonds on a timely basis during the current or next succeeding payment period; or
- (b) to replenish any draws upon the capital subaccount.

231. In the event an interim true-up (whether mandatory or optional) is necessary, the interim true-up adjustment must use the methodology utilized in the most recent annual true-up and be filed not less than 45 days before the first billing cycle of the month in which the revised securitized utility tariff charges will be in effect.

Additional True-Up Provisions

232. The true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the securitized utility tariff charges. Each true-up adjustment must be filed not less than 45 days before the first billing cycle of the month in which the revised securitized utility tariff charges will be in effect. The Commission will have 30 days after the date of a true-up adjustment filing in which to confirm the mathematical accuracy of the servicer's adjustment. If the Commission determines any mathematical inaccuracy during its 30-day review, it will notify Liberty of the inaccuracy and Liberty will correct such inaccuracy in the securitized utility tariff charges that will go into effect on the effective date. Any true-up adjustment filed with the Commission should be effective on its proposed effective date, which must be not less than 45 days after filing. Liberty may adjust the actual true-up process in consultation with the Finance Team if necessary to ensure triple-A rating on the securitized utility tariff bonds.

Lowest Securitized Utility Tariff Charges

233. The proposed transaction structure includes (but is not limited to):

- (a) the use of BondCo as issuer of the securitized utility tariff bonds, limiting the risks to securitized utility tariff bond holders of any adverse impact resulting from a bankruptcy proceeding of Liberty or any of its affiliates;

- (b) the right to impose and collect securitized utility tariff charges that are nonbypassable and which must be trued-up annually or semi-annually, but may be trued-up more frequently, to assure the timely payment of the debt service and other ongoing financing costs;
- (c) additional collateral in the form of a collection account that includes a capital subaccount funded in cash in an amount equal to not less than 0.50% of the original principal amount of the securitized utility tariff bonds and other subaccounts resulting in greater certainty of payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired federal income tax treatment for the securitized utility tariff bond transaction;
- (d) protection of securitized utility tariff bondholders against potential defaults by a servicer that is responsible for billing and collecting the securitized utility tariff charges from existing or future retail customers;
- (e) benefits for federal income tax purposes including (i) the transfer of the rights under this Financing Order to BondCo not resulting in gross income to Liberty and the future revenues under the securitized utility tariff charges being included in Liberty's gross income under its usual method of accounting, (ii) the issuance of the securitized utility tariff bonds and the transfer of the proceeds of the securitized utility tariff bonds to Liberty not resulting in gross income to Liberty, and (iii) the securitized utility tariff bonds constituting obligations of Liberty; and

- (f) the securitized utility tariff bonds will be marketed using a process reviewed in consultation with the Finance Team, through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities, and other aspects of the structuring, marketing and pricing, will be determined, evaluated and factored into the structuring, marketing and pricing of the securitized utility tariff bonds.

D) Use of Proceeds

234. Upon the issuance of securitized utility tariff bonds, BondCo will use the net proceeds from the sale of the securitized utility tariff bonds (after payment of upfront financing costs) to pay Liberty the purchase price of the securitized utility tariff property. The proceeds from the sale of the securitized utility tariff property will be applied by Liberty to recover the securitized utility tariff costs incurred by Liberty in connection with Winter Storm Uri and the retirement of the Asbury Power Plant.

V. Conclusions of Law

The Commission makes the following conclusions of law.

RRR. Liberty is an electrical corporation, as defined in Section 393.1700.1.(6).

SSS. Liberty is entitled to file petitions for a financing order under Section 393.1700.

TTT. The Commission has jurisdiction and authority over Liberty's petitions under Section 393.1700.2.

UUU. The Commission has authority to approve this Financing Order under Section 393.1700.2.

VVV. Notices of Liberty's petitions were provided in compliance with Section 393.1700.2.(3)(a)b.

WWW. Energy transition costs are defined in Section 393.1700.1.(7) to include (a) pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under the Securitization Law where such early retirement or abandonment is deemed reasonable and prudent by the Commission through a final order issued by the Commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements; and (b) pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021. Qualified extraordinary costs are defined in Section 393.1700.1.(13) to include costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

Securitized utility tariff costs are defined Section 393.1700.1(17) to include either energy transition costs or qualified extraordinary costs, as the case may be. Financing costs are defined in Section 393.1700.1.(8) to include: (i) interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds; (ii) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds; (iii) any other cost related to issuing supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order; (iv) any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized utility tariff charges or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued; (v) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including Commission assessment fees, whether paid, payable, or accrued; and (vi) any costs associated with performance of the Commission's responsibilities under the Securitization Law in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its

duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the Commission and paid pursuant to the Securitization Law.

XXX. The Securitization Law permits an electrical corporation to request a Commission order authorizing it to finance securitized utility tariff costs, including its energy transition costs and qualified extraordinary costs.

YYY. BondCo will constitute an assignee of Liberty as defined in Section 393.1700.1.(2) when an interest in the securitized utility tariff property created under this Financing Order is transferred to BondCo.

ZZZ. The holders of the securitized utility tariff bonds and the indenture trustee will each be a financing party as defined in Section 393.1700.1.(10).

AAAA. BondCo may issue securitized utility tariff bonds in accordance with this Financing Order.

BBBB. The issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges approved in this Financing Order satisfies the requirements of Sections 393.1700.2.(3)(c)a., b. and c. mandating that (1) the amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and the recovery of such costs is just and reasonable and in the public interest; (2) the proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds; and (3) the proposed structuring and pricing of

the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

CCCC. Liberty is permitted to earn a return, at the cost of capital authorized from time to time by the Commission in Liberty's rate proceedings, but no more, on any moneys advanced by Liberty to fund reserves, if any, or capital accounts established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility tariff bond. Consequently, any earnings on the capital accounts in excess of the rate of return authorized by the Commission shall be accounted for in a future reconciliation pursuant to Section 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

DDDD. This Financing Order adequately describes the amount of financing costs that Liberty may recover through securitized utility tariff charges and specifies the period over which Liberty may recover securitized utility tariff charges and financing costs in accordance with the requirements of Section 393.1700.2.(3)(c)a.

EEEE. The method approved in this Financing Order for allocating the securitized utility tariff charges among retail customer classes satisfies the requirements of Section 393.1700.2.(3)(c)h.

FFFF. As provided in Section 393.1700.2.(3)(f), at the time the securitized utility tariff property is transferred from Liberty to BondCo, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized herein, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in this Financing Order.

GGGG. As provided in Section 393.1700.2.(3)(d), the securitized utility tariff property identified herein will become securitized utility tariff property under the Securitization Law when they are sold to BondCo.

HHHH. (a) All rights and interests of Liberty under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds that are sold to BondCo under the securitized utility tariff property sale agreement, will be securitized utility tariff property within the meaning of Section 393.1700.1.(18).

IIII. Upon its sale to BondCo, the securitized utility tariff property specified in this Financing Order will constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of securitized utility tariff charges depends on Liberty performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity consumption, as provided by Section 393.1700.5.(1)(a). The securitized utility tariff property will exist (a) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected; and (b) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the

electrical corporation or its successors or assignees and the future consumption of electricity by customers.

JJJJ. The securitized utility tariff property specified in this Financing Order will continue to exist until the securitized utility tariff bonds issued pursuant to this Financing Order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full as provided in Section 393.1700.5.(1)(b).

KKKK. Upon the transfer by Liberty of securitized utility tariff property to BondCo, BondCo will have all of the rights, title, and interest of Liberty with respect to such securitized utility tariff property, including the right to impose, bill, charge, collect, and receive the securitized utility tariff charges authorized by this Financing Order.

LLLL. The securitized utility tariff bonds issued under this Financing Order will be securitized utility tariff bonds within the meaning of Section 393.1700.1.(15), and the securitized utility tariff bonds and holders thereof will be entitled to all of the protections provided under Section 393.1700.11.

MMMM. Amounts that are authorized by this Financing Order as securitized utility tariff charges are securitized utility tariff charges as defined in Section 393.1700.1.(16).

NNNN. As provided in Section 393.1700.5.(1)(e), the interests of BondCo and the indenture trustee in the securitized utility tariff property specified in this Financing Order, and in the revenues and collections arising from the securitized utility tariff property will not be subject to setoff, counterclaim, surcharge, or defense by Liberty or any other person or in connection with the reorganization, bankruptcy, or other insolvency of Liberty or any other entity.

OOOO. The methodology approved in this Financing Order to true-up the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)e.

PPPP. Upon the sale from Liberty to BondCo of the securitized utility tariff property, the servicer will be able to recover the securitized utility tariff charges associated with such securitized utility tariff property only for the benefit of BondCo in accordance with the servicing agreement.

QQQQ. As provided in Section 393.1700.3.(5), Liberty retains sole discretion regarding whether to cause the securitized utility tariff bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Liberty may abandon the issuance of securitized utility tariff bonds under this Financing Order by filing with the Commission a statement of abandonment and the reasons therefor.

RRRR. The sale of the securitized utility tariff property from Liberty to BondCo will be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, Liberty's right, title, and interest in, to, and under the securitized utility tariff property if the sale agreement governing such sale expressly states that the sale is a sale or other absolute transfer in accordance with Sections 393.1700.5.(3)(a) and (b). Upon the sale in accordance with the previous sentence, the characterization of the sale as an absolute transfer and true sale and the corresponding characterization of the property interest of BondCo will not be affected or impaired by the occurrence of (a) the commingling of securitized utility tariff charges with other amounts; (b) the retention by Liberty of (i) a partial or residual interest, including an equity interest, in the securitized utility tariff property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed

on the collection of securitized utility tariff charges; (c) any recourse that BondCo may have against Liberty; (d) any indemnification rights, obligations, or repurchase rights made or provided by Liberty; (e) the obligation of Liberty to collect securitized utility tariff charges on behalf of BondCo; (f) Liberty acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the electrical corporation, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with BondCo or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the securitized utility tariff charges for the benefit and account of BondCo or such financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (g) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (h) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by the electrical corporation or its affiliates with respect to such securitized utility tariff bonds; or (i) any application of the formula-based true-up mechanism, in accordance with Section 393.1700.5.(3)(b).

SSSS. As provided in Section 393.1700.5.(2)(b), a valid and binding security interest in the securitized utility tariff property in favor of the indenture trustee will be created at the later of the time this Financing Order is issued, the indenture is executed and delivered by BondCo granting such security interest, BondCo has rights in the securitized utility tariff property or the power to transfer rights in the securitized utility tariff property, or value is received for the securitized utility tariff property. Upon the filing of a financing statement with the office of the secretary of state as provided in the

Securitization Law, a security interest in securitized utility tariff property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest in accordance with Section 393.1700.5.(2)(c). Without limiting the foregoing, upon such filing a security interest in securitized utility tariff property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Securitization Law.

TTTT. As provided in Section 393.1700.5.(3)(c), the transfer of an interest in securitized utility tariff property to BondCo will be perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with Section 393.1700.7.

UUUU. The priority of the sale perfected under Section 393.1700.5. will not be impaired by any later modification of this Financing Order or securitized utility tariff property or by the commingling of funds arising from securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under Section 393.1700.5., is terminated when they are transferred to a segregated account for BondCo or a financing party. Any proceeds of the securitized utility tariff property shall be held in trust for BondCo.

VVVV. As provided in Section 393.1700.5.(2)(f), if a default occurs under the securitized utility tariff bonds that are securitized by the securitized utility tariff property, the indenture trustee may exercise the rights and remedies available to a secured party under the Missouri Uniform Commercial Code, including the rights and remedies available

under part 6 of article 9 of the Missouri Uniform Commercial Code, and (a) the Commission may order that amounts arising from the related securitized utility tariff charges be transferred to a separate account for the indenture trustee's benefit, to which their lien and security interest may apply and (b) on application by the indenture trustee, the district court of Jasper County, Missouri, will order the sequestration and payment to the indenture trustee of revenues arising from the securitized utility tariff charges.

WWWW. As provided by Section 393.1700.9., (a) neither the State of Missouri nor its political subdivisions are liable on the securitized utility tariff bonds approved under this financing order, and the securitized utility tariff bonds are not a debt or a general obligation of the State of Missouri or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State of Missouri or any agency or political subdivision and (b) the issuance of securitized utility tariff bonds approved under this Financing Order does not, directly, indirectly, or contingently, obligate the State of Missouri or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the securitized utility tariff bonds, other than in their capacity as consumers of electricity.

XXXX. Under Section 393.1700.11.(1), the State of Missouri and its agencies, including the Commission, have pledged for the benefit and protection of bondholders, the owners of the securitized utility tariff property, other financing parties and Liberty, that the State and its agencies will not (a) alter the provisions of the Securitization Law, (b) take or permit any action that impairs or would impair the value of securitized utility tariff property or the security for the securitized utility tariff bonds or revises the securitized utility tariff costs for which recovery is authorized, (c) in any way impair the rights and

remedies of the bondholders, assignees, and other financing parties or (d) except for changes made pursuant to the true-up mechanism authorized under this Financing Order, reduce, alter, or impair securitized utility tariff charges until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the securitized utility tariff bonds have been paid and performed in full. BondCo is authorized under Section 393.1700.11.(2) and this Financing Order to include this pledge in the securitized utility tariff bonds and related documents. The pledge does not preclude limitation or alteration if full compensation is made by law for the full protection of the securitized utility tariff charges collected pursuant to this Financing Order and of the bondholders and any assignee or financing party entering into a contract with Liberty.

YYYY. This Financing Order will remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger, or sale of Liberty, its successors, or assignees.

ZZZZ. Liberty retains sole discretion regarding whether to cause the issuance of any securitized utility tariff bonds authorized by this Financing Order, including the right to defer or postpone such issuance.

AAAAA. Pursuant to Section 393.1700.2.(3)(a)c., this Financing Order is subject to judicial review only in accordance with Sections 386.500 and 386.510.

BBBBB. This Financing Order meets the requirements for a financing order under Section 393.1700.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

Approval

1. **Approval of Petition.** The petitions of Liberty for the issuance of a financing order under Sections 393.1700 are approved, subject to the conditions and criteria provided in this Financing Order.

2. **Authority to Securitize.** Liberty is authorized in accordance with this Financing Order to finance and to cause the issuance of securitized utility tariff bonds with a principal amount equal to the securitized balance at the time the securitized utility tariff bonds are issued that includes upfront financing costs, which includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) rating agency fees, (iv) United States Securities and Exchange Commission registration fees and (v) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the issuance advice letter process, including costs of the Finance Team. The securitized balance as of any given date is equal to the balance of securitized utility tariff costs plus carrying costs of 4.65% for Uri costs and Asbury costs through the date the securitized utility tariff bonds are issued. If the actual upfront financing costs are less than the upfront financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the periodic billing requirement for the first annual true-up adjustment must be reduced by the amount of such unused funds (together with interest, if any, earned from the investment of such funds). If the final upfront financing costs are more than the upfront

financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the periodic billing requirement for the first annual true-up adjustment may be increased by the amount of such unpaid upfront financing costs.

3. **Recovery of Securitized Utility Tariff Costs.** Liberty is authorized to recover \$199,561,572 of its extraordinary costs related to Winter Storm Uri and \$82,921,331 of energy transition costs related to the retirement of Asbury for a total recovery of \$282,482,662. The upfront financing costs are estimated to be \$7.9 million, which will be updated through the issuance advice process.

4. **Tracing Funds.** Liberty's proposed method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property shall be used to trace such funds and to determine the identifiable cash proceeds of any securitized tariff property subject to this Financing Order under applicable law.

5. **Third Party Billing.** If the State of Missouri or this Commission decides to allow billing, collection, and remittance of the securitized utility tariff charges by a third-party supplier within Liberty's Service Territory, such authentication will be consistent with the rating agencies' requirements necessary for the securitized utility tariff bonds to receive and maintain the targeted triple-A rating.

6. **Provision of Information.** Liberty shall take all necessary steps to ensure that the Commission and the Finance Team are provided sufficient and timely information as provided in this Financing Order in order to fulfill their obligations under the Securitization Law and this Financing Order.

7. **Issuance Advice Letter.** Liberty shall submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of

commencement of marketing the securitized utility tariff bonds. The Finance Team will review the issuance advice letter and provide timely feedback to Liberty based on the progression of structuring and marketing of the securitized utility tariff bonds. Not later than one day after the pricing of the securitized utility tariff bonds and before issuance of the securitized utility tariff bonds, Liberty shall provide the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as Appendix A to this Financing Order. Liberty and the lead underwriters for the securitized utility tariff bonds shall provide to the Commission a written certificate, setting forth all calculations and assumptions used to support such calculations and certificate, certifying that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring, marketing and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. In addition, if credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that such credit enhancements, or other arrangements are reasonably expected to provide benefits as required by this Financing Order. The issuance advice letter must be completed, must evidence the actual dollar amount of the initial securitized

utility tariff charges and other information specific to the securitized utility tariff bonds to be issued. The issuance advice letter will demonstrate the ultimate amounts of quantifiable net present value savings. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the issuance advice letter in Appendix A to this Financing Order and the Securitized Utility Tariff Charge Rider SUTC. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with such letter. The Finance Team may request such revisions of the issuance advice letter as may be necessary to assure the accuracy of the calculations and information included and that the requirements of the Securitization Law and of this Financing Order have been met. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter will become effective on the date of issuance of the securitized utility tariff bonds (which may not occur before the fifth business day after pricing) unless before noon on the fourth business day after the Commission receives the issuance advice letter the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

8. **Approval of Tariff.** Before the issuance of any securitized utility tariff bonds under this Financing Order, Liberty must file compliance tariff sheets that conform to the tariff provisions in this Financing Order, but with rate elements identified as estimates. With its submission of the issuance advice letter, Liberty shall also submit a compliance tariff sheet, bearing an effective date no earlier than five business days after its submission, containing the rate elements of the securitized utility tariff charge. That compliance tariff sheet shall become effective on the date the securitized utility tariff

bonds are issued with no further action of the Commission unless the Commission issues a disapproval letter as described in ordering paragraph 7.

Securitized Utility Tariff Charges

9. **Imposition and Collection.** The servicer is authorized to impose on and collect from all existing and future retail customers located within Liberty's Service Territory as it exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized utility tariff charges in an amount sufficient to provide for the timely recovery of the aggregate periodic payment requirements (including payment of principal and interest on the securitized utility tariff bonds), as approved in this Financing Order. If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, unless a customer is in a repayment plan under the Commission's Cold Weather Rule, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

10. **BondCo's Rights and Remedies.** Upon the sale by Liberty of the securitized utility tariff property to BondCo, BondCo will have all of the rights and interest of Liberty with respect to the securitized utility tariff property.

11. **Collector of Securitized Utility Tariff Charges.** Liberty or any subsequent servicer of the securitized utility tariff bonds shall bill a customer or other entity, which, under the terms of this Financing Order or the tariffs approved hereby, is required to bill

or collect securitized utility tariff charges for the securitized utility tariff charges attributable to that customer.

12. **Collection Period.** The scheduled final payment of the last tranche of securitized utility tariff bonds may not exceed 13 years; *provided* that the legal final maturity of the securitized utility tariff bonds may extend to 15 years.

13. **Allocation.** Liberty must allocate the securitized utility tariff charges among rate classes in the manner described in this Financing Order.

14. **Nonbypassability.** Liberty shall collect and remit the securitized utility tariff charges, in accordance with this Financing Order.

15. **True-Ups.** Liberty shall file true-ups of the securitized utility tariff charges as described in this Financing Order.

16. **Ownership Notification.** Liberty shall ensure that each retail customer bill that includes the securitized utility tariff charge meets the notification of ownership and separate line item requirements set forth in this Financing Order.

Securitized Utility Tariff Bonds

17. **Issuance.** Liberty is authorized to issue one series of securitized utility tariff bonds as specified in this Financing Order. The securitized utility tariff bonds must be denominated in United States Dollars.

18. **Upfront Financing Costs.** Liberty may finance upfront financing costs in accordance with the terms of this Financing Order, which provides that the total amount for upfront financing cost, includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) rating agency fees, (iv) United States Securities and Exchange Commission registration fees and (v) any costs of the Commission associated with its responsibilities

under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the issuance advice letter process, including costs of the Finance Team.

19. **Ongoing Financing Costs.** Liberty may recover its actual ongoing financing costs through its securitized utility tariff charges set forth in findings of fact for Issue 4 and Appendix B to this Financing Order. The estimated amount of ongoing financing costs is subject to updating in the issuance advice letter to reflect a change in the size of the securitized utility tariff bond issuance and other information available at the time of submission of the issuance advice letter. As provided in ordering paragraph 30, a servicer, other than Liberty or its affiliates, may collect a servicing fee higher than that set forth in Appendix B to this Financing Order, if such higher fee is approved by the Commission and the indenture trustee.

20. **Collateral.** All securitized utility tariff property and other collateral must be held and administered by the indenture trustee under the indenture as described in Liberty's petitions. BondCo must establish a collection account with the indenture trustee as described in finding of fact numbers 214 through 219. Upon payment of the principal amount of all securitized utility tariff bonds authorized in this Financing Order and the discharge of all obligations in respect thereof, all amounts in the collection account, including investment earnings, must be released by the indenture trustee to BondCo for distribution in accordance with ordering paragraph 21.

21. **Distribution Following Repayment.** Following repayment of the securitized utility tariff bonds authorized in this Financing Order and release of the funds held by the indenture trustee, the servicer, on behalf of BondCo, must distribute to retail

customers, the final balance of the collection account and all subaccounts (other than principal remaining in the capital subaccount), whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other financing costs have been paid. BondCo shall also distribute to retail customers any subsequently collected securitized utility tariff charges.

22. **Funding of Capital Subaccount.** The capital contribution by Liberty to be deposited into the capital subaccount shall be funded by Liberty and not from the proceeds of the sale of securitized utility tariff bonds at an amount not less than 0.50% of the original principal amount of the securitized utility tariff bonds. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount will be released to BondCo for payment to Liberty, with any earnings to be accounted for in a future reconciliation process under Section 393.1700.2(3)(c)k of the Securitization Statute.

23. **Original Issue Discount, Credit Enhancement.** Liberty may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the securitized utility tariff bonds to the extent permitted by and subject to the terms of this Financing Order only if Liberty certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Finance Team. Except for a de minimis amount of original issue discount, any decision to use such arrangements to enhance credit or promote marketability must be made in consultation with the Finance Team. Liberty may not enter into an interest rate swap,

currency hedge, or interest rate hedging arrangement. This ordering paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

24. **Recovery Period.** The Commission authorizes Liberty to recover the securitized utility tariff costs and financing costs over a period not to exceed 15 years from the date the securitized utility tariff bonds are issued, although this does not prohibit recovery of securitized utility tariff charges for service rendered during the 15-year period but not actually collected until after the 15-year period.

25. **Amortization Schedule.** The securitized utility tariff bonds must be structured to provide a securitized utility tariff charge that is based on substantially levelized annual revenue requirements over the expected life of the securitized utility tariff bonds and utilize consistent allocation factors across rate classes, subject to modification in accordance with this Financing Order.

26. **Finance Team Participation in Bond Issuance.** The Commission, acting through the Finance Team, may participate with Liberty in discussions regarding the structuring, marketing and pricing of the securitized utility tariff bonds. The Finance Team has the right to provide input to Liberty and collaborate with Liberty in all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond

maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The Finance Team's review will begin immediately following this Financing Order becoming non-appealable and will continue until the issuance advice letter becomes effective. No member of the Finance Team will have authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings convened by Liberty, participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds, or to be informed of the contents of such calls, e-mails and communications except such matters as are privileged under law. The Commission retains authority over enforcing the terms of its Financing Order, and the Finance Team may petition the Commission for relief for any actual or threatened violation of the terms of the Financing Order.

27. **Use of BondCo.** Liberty shall use BondCo, a bankruptcy-remote special purpose entity as proposed in its petitions, in conjunction with the issuance of the securitized utility tariff bonds authorized under this Financing Order. BondCo must be funded with an amount of capital that is sufficient for BondCo to carry out its intended functions and to avoid the possibility that Liberty would have to extend funds to BondCo in a manner that could jeopardize the bankruptcy remoteness of BondCo.

28. **Not State Obligations.** Each securitized utility tariff bonds shall contain on the face thereof a statement that: "Neither the full faith and credit nor the taxing power of

the State of Missouri is pledged to the payment of the principal of, or interest on, this bond.”

Servicing

29. **Servicing Agreement.** The Commission authorizes Liberty to enter into the servicing agreement with BondCo and to perform the servicing duties approved in this Financing Order. Without limiting the foregoing, in its capacity as initial servicer of the securitized utility tariff property, Liberty is authorized to calculate, bill and collect for the account of BondCo, the securitized utility tariff charges authorized in this Financing Order, as adjusted from time to time to meet the periodic payment requirements as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-ups described in this Financing Order. The servicer will be entitled to collect servicing fees in accordance with the provisions of the servicing agreement, provided that, as set forth in Appendix B, the annual servicing fee payable to Liberty while it is serving as servicer (or to any other servicer affiliated with Liberty) must not at any time exceed 0.05% of the original principal amount of the securitized utility tariff bonds. The annual servicing fee payable to any other servicer not affiliated with Liberty must not at any time exceed 0.60% of the original principal amount of the securitized utility tariff bonds unless such higher rate is approved by the Commission under ordering paragraph 31.

30. **Administration Agreement.** The Commission authorizes Liberty to enter into an administration agreement with BondCo to provide the services covered by the administration agreements. The fee charged by Liberty as administrator under that agreement may not exceed \$50,000 per annum plus reimbursable third-party costs.

31. **Replacement of Liberty as Servicer.** Upon the occurrence of a servicer termination event under the servicing agreement, the financing parties may replace Liberty as the servicer in accordance with the terms of the servicing agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee specified in ordering paragraph 29, the replacement servicer must not begin providing service until the date the Commission approves the appointment of such replacement servicer. No entity may replace Liberty as the servicer in any of its servicing functions with respect to the securitized utility tariff charges and the securitized utility tariff property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded.

32. **Amendment of Agreements.** The parties to the servicing agreement, administration agreement, indenture, and securitized utility tariff property purchase and sale agreement may amend the terms of such agreements; provided that no amendment to any such agreement increases the ongoing financing costs without the approval of the Commission. Any amendment to any such agreement that may have the effect of increasing ongoing financing costs must be provided by BondCo to the Commission along with a statement as to the possible effect of the amendment on the ongoing financing costs.

33. **Collection Terms.** The servicer must remit collections of the securitized utility tariff charges to BondCo or the indenture trustee for BondCo's account in accordance with the terms of the servicing agreement.

34. **Federal Securities Law Requirements.** Each other entity responsible for collecting securitized utility tariff charges from retail customers must furnish to BondCo or Liberty or to any successor servicer information and documents necessary to enable BondCo or Liberty or any successor servicer to comply with their respective disclosure and reporting requirements, if any, with respect to the securitized utility tariff bonds under federal securities laws.

Structure of the Securitization

35. **Structure.** Liberty shall structure the issuance of the securitized utility tariff bonds and the imposition and collection of the securitized utility tariff charges as set forth in this Financing Order.

Use of Proceeds

36. **Use of Proceeds.** Upon the issuance of securitized utility tariff bonds, BondCo shall pay the net proceeds from the sale of the securitized utility tariff bonds (after payment of upfront financing costs) to pay Liberty the purchase price of the securitized utility tariff property. Liberty will apply these net proceeds to recover the qualified extraordinary costs in connection with Winter Storm Uri and the energy transition costs in connection with retiring the Asbury Power Plant in accordance with the terms hereof.

Miscellaneous Provisions

37. **Continuing Issuance Right.** In accordance with Section 393.1700.2.(3)(c)n., Liberty has the continuing irrevocable right to cause the issuance of securitized utility tariff bonds in accordance with this Financing Order for a period extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing

Order, there is a severe disruption in the financial markets of the United States, the effective period may be extended with the approval of the Finance Team to a date which is not less than 90 days after the date such disruption ends.

38. **Binding on Successors.** This Financing Order, together with the securitized utility tariff charges authorized in it, shall be binding on Liberty and any successor to Liberty that provides transmission and distribution service directly to retail customers in Liberty's Service Territory as it exists on the date of this Financing Order.

39. **Flexibility.** Subject to compliance with the requirements of this Financing Order, Liberty and BondCo should be afforded flexibility in establishing the terms and conditions of the securitized utility tariff bonds, including the final structure of BondCo, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, interest rates, use of original issue discount, and other financing costs.

40. **Effectiveness of Order.** This Financing Order will become effective in ten days, given the need to for prompt resolution of any issues regarding this proceeding, as well as to allow Liberty flexibility in accessing the financial markets. Notwithstanding the foregoing, no securitized utility tariff property is created hereunder, and Liberty is not authorized to impose, collect, and receive securitized utility tariff charges until the securitized utility tariff property has been sold to BondCo in conjunction with the issuance of the securitized utility tariff bonds.

41. **Regulatory Approvals.** All regulatory approvals within the jurisdiction of the Commission that are necessary for the recovery of the approved securitized utility tariff costs are the subject of the petitions and for all related transactions contemplated in the petitions are granted.

42. **Payment of Commission's Costs for Professional Services.** Liberty shall pay all of the costs of the Commission in connection with the petitions and this Financing Order, including, but not limited to, the Commission's outside attorneys' fees and the fees of the Finance Team from the proceeds of the securitized utility tariff bonds on the date of issuance.

43. **Effect.** This Financing Order constitutes a legal financing order for Liberty under the Securitization Law. A financing order gives rise to rights, interests, obligations, and duties as expressed in the Securitization Law. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Liberty and the servicer are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the conditions and criteria established in this Financing Order.

44. This report and order shall become effective on October 2, 2022.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeier CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of)
Heather L. Cline for Change of Electric)
Supplier from Empire District Electric) **File No. EO-2024-0098**
Company d/b/a Liberty to Southwest)
Electric Cooperative)

ORDER DISMISSING APPLICATION

ELECTRIC

§4.1. Change of suppliers

The Commission dismissed an application to change electric suppliers where the applicant's application gave no basis for changing electric suppliers other than a rate differential.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
December, 2023.

In the Matter of the Application of)
Heather L. Cline for Change of Electric)
Supplier from Empire District Electric)
Company d/b/a Liberty to Southwest)
Electric Cooperative)

File No. EO-2024-0098

ORDER DISMISSING APPLICATION

Issue Date: December 7, 2023

Effective Date: January 6, 2024

On September 18, 2023,¹ Heather L. Cline filed an application with the Commission requesting a change of electric supplier from The Empire District Electric Company d/b/a Liberty to Southwest Electric Cooperative (SWEC). In her application, Ms. Cline listed a Bolivar, Missouri address and gave the following for the reason she is requesting a change of electric provider:

Liberty Utilities charges both kilowatt per hour and service fees beyond what is considered reasonable. We currently get charged a customer charge, usage charge (kilowatts used), energy efficiency program cost, energy invest cost, fuel charge and taxes. When comparing rates with our neighbors Southwest Electric statement at .100/kwh and calculating our rates with Liberty at .154/kwh would have been approximately \$130 less for one month. If Liberty Utilities is allowed to charge and set their own unreasonable pricing structure, customers should have a choice in their service provider. We live outside the city limits of Bolivar with most of our neighbors having Southwest Electric.²

¹ Unless otherwise noted, all dates refer to 2023.

² *Application for Change of Electric Service Provider*, p. 1 (filed September 18).

On October 12, Liberty filed its *Response to Application and Motion to Dismiss*. On October 16, SWEC filed its *Response to Application of Heather L. Cline for Change of Electric Supplier from Liberty Utilities to Southwest Electric Cooperative*.

On November 2, the Staff of the Commission (Staff) filed *Staff's Recommendation and Motion to Dismiss*. In the recommendation, Staff stated that when they contacted Ms. Cline she "did not offer any information regarding experiencing abnormal power, voltage, current or other problem with her electric service being provided, nor did she have any safety concerns" and that she mentioned that she wanted to change her supplier to SWEC "because of the charges applied by Liberty on her bills."³

Section 393.106.2, RSMo. 2016, addresses the right of electrical corporations to provide electric service and the procedure to change electric suppliers. It states, in part:

Once an electrical corporation . . . lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter.

Similarly, Section 394.315.2, RSMo. 2016, addresses the right of rural electric cooperatives to provide electric service and the procedure to change electric suppliers. It states, in part:

³ *Staff's Recommendation and Motion to Dismiss*, Appendix A, p. 4 (filed November 2).

Once a rural electric cooperative . . . lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure, and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter.

Sections 393.106 and 394.315, RSMo. 2016, are commonly referred to as the “anti-flip-flop” statutes. The purpose of the statutes is to prevent customers from switching back and forth between two electric suppliers to take advantage of rate differences.⁴

Although the Commission has limited jurisdiction over rural electric cooperatives, Section 394.080.5, RSMo. (Supp. 2022), grants the Commission authority to order a rural electric cooperative to provide service if it is in the public interest for a reason other than a rate differential.

Both Liberty’s *Response to Application and Motion to Dismiss* and Staff’s *Recommendation and Motion to Dismiss* argue that Ms. Cline’s application gives no basis for changing electric suppliers other than a rate differential. When contacted by Staff, Ms. Cline offered no reasons for her request to change electric suppliers other than the rates charged by Liberty.

⁴ *Empire Dist. Elec. Co. v. Southwest Electric Co-op.*, 863 S.W.2d 892, 896 (Mo. App. S.D. 1993).

Under the state statutes, the Commission does not have authority to grant Ms. Cline's request to change electric suppliers based solely on a rate differential. Therefore, the Commission will dismiss her application.

THE COMMISSION ORDERS THAT:

1. The motions to dismiss by The Empire District Electric Company d/b/a Liberty and the Staff of the Commission are granted.
2. The change of electric supplier application of Heather L. Cline is dismissed.
3. This order shall become effective on January 6, 2024.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Seyer, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire	)	
Missouri Inc. d/b/a Spire for Permission	)	
and Approval and a Certificate of	)	
Convenience and Necessity to Construct,	)	
Install, Own, Operate, Maintain, and	)	<u>File No. GA-2023-0441</u>
Otherwise Control and Manage a Natural	)	
Gas Distribution System to Provide Gas	)	
Service in Platte County, Missouri as an	)	
Expansion of its Existing Certificated	)	
Areas	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.4. Economic feasibility of proposed service

In granting a waiver of the feasibility study requirement, the Commission found that the assets in the requested service area were installed in 1997 and 2004 and that plans, specifications, or estimates were no longer available for the installed assets.

§34. Public convenience and necessity or public benefit

§43. Gas

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

§43. Gas

The Commission approved a gas distribution utility’s application to expand its service area in Platte County, Missouri.

EVIDENCE, PRACTICE AND PROCEDURE**§23. Notice and hearing**

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.

GAS**§3. Certificate of convenience and necessity**

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

§3. Certificate of convenience and necessity

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§3. Certificate of convenience and necessity

In granting a waiver of the feasibility study requirement, the Commission found that the assets in the requested service area were installed in 1997 and 2004 and that plans, specifications, or estimates were no longer available for the installed assets.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at the
Commission's office in
Jefferson City on the 7th day of
December, 2023.

In the Matter of the Application of Spire)
Missouri Inc. d/b/a Spire, for Permission)
and Approval and a Certificate of)
Convenience and Necessity to Construct,)
Install, Own, Operate, Maintain, and)
Otherwise Control and Manage a Natural)
Gas Distribution System to Provide Gas)
Service in Platte County, Missouri as an)
Expansion of its Existing Certificated)
Areas)

File No. GA-2023-0441

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: December 7, 2023

Effective Date: December 17, 2023

On June 28, 2023,¹ Spire Missouri, Inc., d/b/a Spire, filed an application with the Commission seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Platte County, Missouri, as a further expansion of its existing certificated area. The application also included a request to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) and a request to waive the feasibility study requirement of Commission Rule 20 CSR

¹ Unless otherwise noted, all date references are to the year 2023.

4240-3.205(1)(A)5.² The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

On August 7, Spire filed an amended application which corrected the legal description of the proposed area subject to the requested CCN.

In Commission File No. GA-2023-0110, The Empire District Gas Company (“EDG”) d/b/a Liberty filed an application for a CCN for six sections in Platte County. Spire claimed it had assets and customers located within a portion of the proposed area subject to EDG’s CCN application. The Staff of the Commission (Staff), EDG, and Spire entered into a Stipulation and Agreement to apportion the CCN area between EDG and Spire. Per terms of the Stipulation and Agreement, which was approved by the Commission on June 1,³ Spire’s application and subsequent amended application requests a CCN for the area apportioned to it.

On September 28, Staff filed a recommendation that a CCN should be granted for the service area described in the amended application, subject to certain conditions. Staff also agreed with Spire’s position that good cause exists to waive the 60-day notice requirement.

On October 2, Spire filed a proposed revised tariff sheet, bearing an effective date of November 1 and assigned Tracking No. JG-2024-0044, which purported to include the area subject to the CCN request.⁴ On October 9, Spire filed a response to Staff’s

² Commission Rule 20 CSR 4240-3.205(1)(A)5 states that applications for a CCN by a gas company for a service area shall include the following:

A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three years of operations;

³ *Order Approving Stipulation and Agreement and Amending Order Granting Certificate of Convenience and Necessity*, File No. GA-2023-0110, issued June 1, 2023, effective June 11, 2023.

⁴ P.S.C. MO. No. 9, First Revised Sheet No. 21.15, Canceling Original Sheet No. 21.15.

September 28th recommendation, stating that it agreed with all of Staff's recommended conditions, except for the condition requiring it to quantify the assets included in rate base located in the area subject to the CCN request.

As there was not agreement between Spire and Staff on all conditions to the granting of the CCN, on October 13, the Commission suspended Spire's proposed revised tariff sheet until December 31 and scheduled a prehearing conference.

On November 2, Spire and Staff filed a *Joint Filing to Amend Staff Condition and Request to Cancel Prehearing Conference*. The joint filing informed the Commission that the two parties had reached agreement on language for the condition requiring Spire to quantify the assets included in rate base located in the area subject to the CCN request.

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary.⁵

The Commission may grant a gas corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."⁶ The Commission articulated criteria to be used when evaluating applications for CCNs in *In Re Intercon Gas, Inc.*⁷

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria (often referred to as the Tartan Factors):⁸

⁵ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

⁶ Section 393.170.3, RSMo.

⁷ 30 Mo P.S.C. (N.S.) 554, 561 (1991).

⁸ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

The assets installed in the requested service area were installed by Missouri Gas Energy (MGE) in 1997 and 2004 and service was started in 2000 and 2011, respectively. Spire acquired the assets through its acquisition of MGE in 2013.⁹ The assets in the area have historically served four residential rate class customers and one industrial rate class customer.¹⁰ Given the current and future needs of those customers, there is a need for the service.

Spire is qualified to provide the service, as it already provides gas service to customers in 31 Western Missouri counties.¹¹ Spire has the financial ability to provide the service, as there is no purchase price involved with the CCN request and Staff has no concerns with Spire's financial risk profile.¹²

In requesting a waiver of the requirement of Commission Rule 20 CSR 4240-3.205(1)(A)5 for a feasibility study, Spire states in its amended application that the assets in the requested service area were installed in 1997 and 2004 and that "any plans, specifications, or estimates are no longer available" for the installed assets.¹³ Given this

⁹ *Amended Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver*, p. 3 (filed August 7).

¹⁰ *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 4 (filed September 28).

¹¹ *Amended Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver*, p. 2 (filed August 7); *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 7 (filed September 28).

¹² *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 5 (filed September 28).

¹³ *Amended Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver*, pp. 3, 5 (filed August 7).

limitation and given that Staff does not object to waiver of the feasibility study requirement, the Commission finds good cause to grant waiver of the requirement for this application. Furthermore, given that the assets in the service area are already installed and are not being purchased, the Commission finds that the addition of the requested certificated service area is economically feasible.

The Commission finds that Spire's application promotes the public interest by continuing to provide service to its existing customers in the requested service area.

Based on the amended application and Staff's recommendation, the Commission concludes that the factors for granting a certificate of convenience and necessity have been satisfied. The Commission further finds Spire's provision of gas service to the area, as described in its amended application and subject to the conditions agreed to by Spire and Staff, is necessary and convenient for the public service. Thus, the Commission will grant Spire a CCN to provide gas service within the area set out in the amended application, subject to the conditions recommended by Staff and agreed to by Spire.

The Commission will grant Spire's request for waiver of the 60-day case filing notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Spire's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

Finally, so that service may continue to the customers and the revised tariff sheet can become effective on December 31, the Commission finds it reasonable for this order to be effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Spire is granted a certificate of convenience and necessity, subject to the conditions set out below, to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service for the area in Platte County, Missouri described in its amended application as follows:

All of Section 1 Township 52 North Range 34 West.

All of Section 2, Township 52 North, Range 34 West except the following: Beginning at the Northwest Corner of Section 2 Township 52 North Range 34 West then south approximately 50', then east approximately 2,000' then north approximately 50', then west approximately 2,000' to point of beginning.

Part of the Southeast Quarter of the Southeast Quarter of Section 35, Township 53 North, Range 34 West: beginning at the southeast corner of the southeast quarter then west approximately 795', then north approximately 980', then then east approximately 795', then south approximately 980' to point of beginning.

2. Spire's CCN is subject to the following conditions:
- a. Spire shall initiate an internal audit of its processes and procedures regarding compliance with Commission Rule 20 CSR 4240-3.205 to ensure all of its regulated area of operation has been certificated by the Commission. The report shall also include steps taken to avoid constructing and/or operating in uncertificated areas in the future.
 - b. Spire shall provide its internal audit report to the Commission prior to filing for its next general rate case.
 - c. Spire shall file an updated tariff sheet incorporating the apportioned area.
 - d. Spire shall quantify the cost of the assets, as available in its financial records, included in rate base located in the area subject to the CCN request by using estimates of the cost of assets using the available information, such as averages of vintage years of 1997 and 2004, and project footages, as appropriate.
 - e. Spire shall hold ratepayers receiving service outside of the requested CCN area harmless from any expenses in excess of billed non-gas revenues.

3. No later than December 18, 2023, the Staff of the Commission shall file a recommendation on Spire's proposed revised tariff sheet, filed on October 2, 2023, and assigned Tracking No. JG-2024-0044.

4. The requirement to file a feasibility study pursuant to Commission Rule 20 CSR 4240-3.205(1)(A)5 is waived for this application.

5. The 60-day notice of case filing requirement is waived for this application.

6. This order shall become effective on December 17, 2023.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Seyer, Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Brett Felber,	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2023-0395</u>
	)	
Union Electric Company d/b/a Ameren	)	
Missouri,	)	
Respondent.	)	

ORDER GRANTING AMEREN MISSOURI'S MOTION TO STRIKE**EVIDENCE, PRACTICE AND PROCEDURE****§5. Admissibility****§9. Particular kinds of evidence generally****§30. Settlement procedures**

In striking a filing which included a settlement offer, the Commission found that Commission rules makes privileged the facts disclosed in the course of a pre-hearing conference and settlement offers.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of December, 2023.

Brett Felber,

Complainant,

v.

Union Electric Company d/b/a Ameren
Missouri,

Respondent.

File No. EC-2023-0395**ORDER GRANTING AMEREN MISSOURI'S MOTION TO STRIKE**

Issue Date: December 7, 2023

Effective Date: December 7, 2023

On November 14, 2023, Union Electric Company d/b/a Ameren Missouri filed a motion asking the Commission to strike the *Settlement Agreement and Release of All Claims* and also portions of *Complainant's Motion for Restoration of Utility Services* filed on November 13, 2023, under EFIS Item No. 210.

In support of its motion, Ameren Missouri states that Mr. Felber contacted Ameren Missouri's call center to establish a Cold Weather Rule payment agreement. Ameren Missouri's Regulatory Liaison, Aubrey Krcmar, emailed Mr. Felber about establishing a payment agreement. Mr. Felber responded that Ameren Missouri should draft an agreement. An agreement was subsequently drafted and sent to Mr. Felber.

On November 13, 2023, Mr. Felber attached the *Settlement Agreement and Release of All Claims* to his Complainant's *Motion for Restoration of Utility Services*. Mr. Felber then proceeded to present argument in his motion based upon the factual content

of the settlement agreement. Ameren Missouri asks the Commission to strike its settlement offer and paragraphs referencing the settlement offer contained in Mr. Felber's November 13, 2023, *Complainant's Motion for Restoration of Utility Services*.

Mr. Felber filed a motion in opposition to Ameren Missouri's request, but did not state a legal reason why the material should not be stricken from the record.

Commission Rule 20 CSR. 4240-2.090(7) which concerns settlement offers and pre-hearings before the Commission, states:

Facts disclosed in the course of a pre-hearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence.

The Commission will order Ameren Missouri's Settlement Offer, contained under EFIS Item no. 210, stricken from the record along with paragraphs 11-17 of Mr. Felber's November 13, 2023, *Complainant's Motion for Restoration of Utility Services*.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's motion to strike is granted.
2. The Data Center shall strike EFIS item number 210, Ameren Missouri's *Settlement Agreement and Release of All Claims* from the record by removing it from EFIS. The Data Center shall strike paragraphs 11-17 of Mr. Felber's November 13, 2023, *Complainant's Motion for Restoration of Utility Services* by redacting those paragraphs from his motion.
3. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Own, Operate,)
Control, Manage, and Maintain a High)
Voltage, Direct Current Transmission Line)
and Associated Converter Station)

File No. EA-2023-0017

ORDER DENYING APPLICATION FOR REHEARING

EVIDENCE, PRACTICE AND PROCEDURE

§24. Procedures, evidence and proof

§27. Finality and conclusiveness

The Commission denied applications for rehearing regarding its decision in a case to construct a direct current transmission line.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
December, 2023.

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its)
Certificate of Convenience and Necessity)
Authorizing it to Construct, Own, Operate,)
Control, Manage, and Maintain a High)
Voltage, Direct Current Transmission Line)
and Associated Converter Station)

File No. EA-2023-0017

ORDER DENYING APPLICATION FOR REHEARING

Issue Date: December 7, 2023

Effective Date: December 7, 2023

On October 12, 2023, the Commission issued its *Report and Order* effective November 11, 2023, regarding the application of Grain Belt Express LLC for a certificate of convenience and necessity. On November 10, 2023, the Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Soybean Association, and Missouri Corn Growers Association (collectively referred to as the "Agricultural Associations") filed a timely application for rehearing.

Section 386.500.1, RSMo (2016), states that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, the application for rehearing does not demonstrate sufficient reason to rehear the matter.

The Commission will deny the application for rehearing.

THE COMMISSION ORDERS THAT:

1. The *Application for Rehearing by Missouri's Agricultural Associations* filed on November 10, 2023, is denied.
2. This order shall become effective on December 7, 2023.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman,
and Kolkmeier CC., concur.
Hahn, C., dissents.

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	<u>File No. WC-2022-0295</u>
v.	)	
	)	
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park	)	
	)	
Respondent.	)	

ORDER DENYING MOTION FOR SUMMARY DETERMINATION

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§24. Procedures, evidence and proof

In finding the motion for summary judgment to be legally defective, the Commission determined that the motion failed to set forth each material fact in separately numbered paragraphs and failed to specifically reference the record.

§24. Procedures, evidence and proof

The Commission found that its rules state that the Commission may hear argument on a motion for summary determination; however, the Commission determined it unnecessary for the pending motion.

§24. Procedures, evidence and proof

The Commission found that its rules provide that the Commission may grant a motion for summary determination if there is no genuine issue as to any material fact, and the Commission determines that the granting of summary determination is in the public interest.

§26. Burden of proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

PUBLIC UTILITIES

§2. Nature of

§10. Tests in general

The Commission found that the fact that the utility service agreement is contained in a lease between a landlord and a tenant does not place it beyond Commission's jurisdiction.

§2. Nature of**§19. Solicitation of business**

The Commission found that the fundamental characteristic of a public utility is indiscriminate dealing with the general public.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of December, 2023.

The Staff of the Missouri Public Service Commission,
Complainant,
v.
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park.
Respondent.

File No. WC-2022-0295

ORDER DENYING MOTION FOR SUMMARY DETERMINATION

Issue Date: December 7, 2023

Effective Date: December 7, 2023

This order denies I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park's (Respondent) *Amended Motion for Summary Determination*.

Background

On April 22, 2022, the Staff of the Missouri Public Service Commission (Staff) filed a complaint with the Commission against Respondent alleging the unlawful provision of water and sewer services to the public, for gain, without certification or other authority from the Missouri Public Service Commission, in violation of Section 393.170.2, RSMo. The Commission consolidated the sewer complaint, File No. SC-2022-0296, into this file on May 31, 2022.

On November 23, 2022, Respondent filed a motion for summary determination. Due to an ongoing discovery dispute that motion was continued until the Commission's Staff (Staff) had sufficient discovery to answer the motion as permitted under Commission

Rule 20 CSR 4240-2.117(1)(D). Respondent filed an Amended motion for summary determination on September 22, 2023. That motion is the subject of this order.

On October 20, 2023, Staff filed *Staff Response in Opposition to I-70 Mobile City, Inc. D/B/A I-70 Mobile City Park's Amended Motion for Summary Determination* arguing that issues of material fact exist concerning whether I-70 Mobile City Park is engaging in the unlawful provision of water and sewer services to the public for gain without certification or other authority from the Commission. Staff also argues that the pleading does not meet the requirements imposed under Commission Rule 20 CSR 4240-2.117(1)(B), which requires the moving party to state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue. Staff states that many of Respondent's paragraphs in its Statement of Material Facts for which there is No Genuine Issue contain multiple factual statements. Many of the paragraphs contain no material facts.

On October 30, 2023, Respondent filed its Motion to *Strike Staff's Response in Opposition to Amended Motion for Summary Determination*. Respondent's motion asks the Commission to 1) strike Staff's response to Respondent's *Amended Motion for Summary Determination*, 2) deem the facts set forth in its motion admitted, and 3) grant summary determination in Respondent's favor.

Respondent has requested to present oral argument in support of its motion. Commission Rule 20 CSR 4240-2.117(G) states that the Commission may hear argument on a motion for summary determination. The Commission does not find that oral argument is necessary for this motion.

Respondent, as the party requesting summary determination, has the burden of

establishing a right to judgment as a matter of law.¹

Amended Summary Determination Motion

Respondent's motion acknowledges that factual disputes may exist concerning whether it meets the statutory definitions of a water corporation, a sewer corporation, or a public utility, and whether Respondent owns facilities that meet the statutory definitions of a water or sewer system.²

Respondent states it does not believe a private mobile home community can be devoted to a public use.³ Respondent's *Amended Motion for Summary Determination* is focused on demonstrating that its systems are not devoted to public use.

Respondent's amended motion puts forth facts for the Commission's consideration. Respondent's facts include information about the content of the mobile home park, leasing and rental eligibility, contracting for water and sewer services, and general information concerning how tenants are billed for water and sewer services. Some of the motion's paragraphs set out multiple facts.

Relevant Law

Section 386.390.1, RSMo, authorizes the Commission to hear and decide complaints "setting forth any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission..."

Commission Rule 20 CSR 4240-2.117(1)(E) provides that the Commission may

¹ *Wilmes v. Consumers Oil Co. of Maryville*, 473 S.W. 3d 705, 714 (Mo. App. W.D. 2015).

² Amended Motion for Summary Determination, Page 2, September 22, 2023.

³ Amended Motion for Summary Determination, Page 3, September 22, 2023.

grant a motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that the granting of summary determination is in the public interest.

Commission Rule 4 CSR 240-2.117(1)(B) states: “Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact to which movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of issue as to such facts.”

A summary judgment motion that fails to set forth each material fact in separately numbered paragraphs and fails to specifically reference the record is legally defective and cannot serve as the basis to grant summary judgment. *Hanna v. Darr*, 154 S.W.3d 2, 5 (Mo.App.2004).

Devoted to Public Use

The requirement that a utility be devoted to public use prior to regulation does not exist in statute, but has evolved through Missouri case law.

State ex rel. M.O. Danciger & Company v. Public Serv. Comm’n, 205 S.W. 36, (Mo. banc 1918), sets out that the fundamental characteristic of a public calling is indiscriminate dealing with the general public. *Danciger* quotes that “If a man holds himself out to do it for every one who asks him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special

contract.”⁴ *Danciger* proposes that before a utility can be regulated it must be devoted to a public use.⁵ This requirement does not exist in Missouri statutes. The Court stated that the test for determining if a company was devoting its services to the public use was whether the fundamental characteristic of a public calling is an indiscriminate dealing with the general public.⁶ The court further states that, “in determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does.”⁷

State ex rel. Cirese v. Public Service Commission, 178 S.W.2d 788 (Mo.App.1944), held that an entity was a public utility where it sold electricity to customers within a several block area of downtown Kansas City, because it offered its services indiscriminately to all persons within the area it was capable of serving. The court noted that it did not overlook that the entity sold service only under private contract.

In *Osage Water Co. v. Miller County Water Auth., Inc.*, the Court refines the requirement that a facility be devoted to the public use before they are subject to Commission regulation.⁸ The court in *Osage Water* found service to the two subdivisions satisfied *Danciger*. The *Osage Water* court stated:

The record is void of any testimony which suggested that Defendant has refused to provide water service to any of the residents in the two subdivisions at issue. Indeed, the testimony suggested that Defendant has undertaken the responsibility to provide water service to everyone within its capability, not merely for particular persons.

This refinement addresses both the geographic area of service indicating that a smaller

⁴ *Danciger*, 205 S.W. at 42.

⁵ *Danciger*, 205 S.W. at 40.

⁶ *Danciger*, 205 S.W. at 42.

⁷ *Danciger*, 205 S.W. at 39.

⁸ *Osage Water Co. v. Miller County Water Auth., Inc.*, 950 S.W.2d 569 (Mo. App. S.D. 1997)

service area would qualify for regulation. The Commission currently regulates small systems encompassing single subdivisions. The court notes the lack of refusal of service as further evidence that the entity was devoted to public use.

In *Hurricane Deck Holding Co. v. Public Serv. Com'n*, the Court further refined what it is for a utility to be devoted to a public use.⁹ The court in *Hurricane Deck* held that the Commission did not err in finding that Hurricane Deck was operating as a public utility subject to its regulation. The court reviewed the Commission's order in that case, which stated:

The key fact in that by sending out bills to the residents, Hurricane Deck Holding Company offered service to all residents of the given subdivisions. It is not purporting to merely offer services to a few friends. By offering water and sewer utility services to the public, even if that public is confined to the residents of a few subdivisions, Hurricane Deck Holding Company has made itself subject to regulation as a public utility.

These cases address the requirement that before an entity can be subject to regulation by the Commission it must be devoted to a public use. The case law indicates that if an entity providing utility services holds itself out within a defined area as the provider for that area and offers service in that area within its capabilities it meets the threshold for devoted to public use.

Discussion

Commission Rule 20 CSR 4240-2.117(1)(B) requires the moving party, Respondent, to "state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue." Multiple paragraphs in Respondent's motion set out multiple material facts in violation of the Commission's summary determination rule. Respondent's motion is legally defective.

⁹ *Hurricane Deck Holding Co. v. Public Serv. Com'n*, 289 S.W.3d 260 (Mo. App. W.D. 2009).

The summary determination motion also does not address whether Respondent meets the statutory definition of a water or sewer corporation. “Instead, the Motion for Summary Determination focuses upon the lack of any public use inherent in the landlord-tenant relationship in a private mobile home community and recreational vehicle lot.”¹⁰ The question is whether Respondent’s provision of water or sewer services is devoted to public use.

Whether a utility is devoted to public use is not a checkbox analysis because devoted to public use developed through Missouri case law. Unlike the statutory requirement defining a sewer corporation as having greater than 25 outlets, an evaluation of whether an entity is devoted to the public use is more nuanced. If a summary determination motion were to demonstrate that a sewer system had 24 outlets, the issue would be conclusively determined and the moving party would be entitled to judgment as a matter of law. Here Respondent must successfully address all requirements derived from case law to determine if an entity is devoted to public use.

Respondent puts forth a minimal amount of material facts to support its contention that it is not devoted to public use. Respondent states it does not offer rental of the lots to the general public indiscriminately. Respondent admits I-70 Mobile City Park is a mobile home community with 141 rental areas. Respondent admits that some of these rental areas are parking or storage areas. Respondent admits that water for the mobile home park is provided by Bates City. Respondent admits that it is billed for the water and sewer services. Respondent admits it bills its leased tenants for reimbursement of water and sewer service. Respondent states that its contracts for water and sewer services are

¹⁰ *Legal Memorandum in Support of Motion for Summary Determination*, Page 3, September 22, 2023.

contained in its leases and that it only leases lots to persons who sign a lease contracting for water and sewer services and agree to be billed for those services. Respondent admits that it offers water and sewer connections to tenants that meet specific criteria and execute a contract. Respondent allocates costs for water and sewer service based upon those lease contracts. Respondent states that some leases offer rental space but no water or sewer service. Respondent states that it does not provide water or sewer services to all individuals who rent spaces or land at I-70 Mobile City.

Respondent frames its argument to address the devoted to public use factors as set forth in case law. Respondent asserts, at paragraph 22 of its motion, the legal conclusion that it does not provide water or sewer services to the public. In support, Respondent argues that it does not offer leases to the general public indiscriminately and that tenants must meet eligibility requirements to lease lots in the mobile home park. Respondent's argument conflates the requirements for establishing a lease in I-70 Mobile City Park with the requirements for receiving water and sewer service. The Commission is not concerned with the eligibility of individuals to rent at I-70 Mobile City Park, but with what requirements there are to receive water or sewer service.

Respondent argues its provision of service is a special contract between itself and potential tenants, whereby tenants can only receive water or sewer service through the execution of a lease containing those terms. However, eligibility criteria are not unusual and many public utilities use service agreements prior to providing service. The *Cirese* case showed that a private contract does not prevent an entity from being devoted to public use. The only available option to rent a lot at I-70 Mobile City Park is to sign a lease. The fact that the utility service agreement is contained in a lease between a

landlord and a tenant does not place it beyond Commission's jurisdiction.

Respondent states that not all of its tenants are offered water or sewer services and that not all of its tenants receive water and sewer service under their leases. However, that does not address whether Respondent is holding itself out as the water and sewer service provider for I-70 Mobile City Park. Not all of the 141 rental areas are receiving water or sewer services, because not all of those rental areas need them. Tenants renting spots to park vehicles or for storage would not need water or sewer services. Respondent has not included any specific criteria for receiving water or sewer service beyond establishing a lease. Much like *Osage Water*, the motion is void of any material fact suggesting that Respondent has refused to provide water or sewer service to any of the tenants of mobile city park who may have requested those services or on what specific basis.

Respondent's motion does not contain sufficient material facts to support its contention that it is not devoted to public use. Therefore, Respondent's motion does not entitle it to judgment as a matter of law because Respondent has not met its burden to show that they are not providing water or sewer services indiscriminately to the public within I-70 Mobile City Park. Respondent has only established that they are not renting lots indiscriminately to the general public and that not all rental areas receive water or sewer service. Respondent fails to provide supporting material facts necessary to determine whether they are devoted to public use.

Additionally, Respondent's motion is legally defective because it failed to follow the rules governing motions for summary determination. The Commission need not address the sufficiency of Staff's response because Respondent's motion is defective on

its face and fails to meet its burden.

The Commission further finds that it would not be in the public interest to grant Respondent's motion for summary determination, because, as *Danciger* notes, it is not what an entity says it does but how it is actually operating that determines whether it is devoted to public use.

THE COMMISSION ORDERS THAT:

1. Respondent's motion for oral argument on the *Amended Motion for Summary Determination* is denied.
2. Respondent's Motion for Summary Determination is denied.
3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence	)	
Rivers Utility Operating Company, Inc., for	)	
Authority to Acquire Certain Water and Sewer	)	<u>File No. WA-2023-0450</u>
Assets And for Certificates of Convenience	)	
And Necessity	)	

ORDER APPROVING TRANSFER OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§45. Water

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§45. Water

§47. Sewers

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§45. Water

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in several areas in Missouri.

PUBLIC UTILITIES

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in several areas in Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WATER**§2. Certificate of convenience and necessity**

The Commission approved a water and sewer utility's application to expand its service area in several areas in Missouri.

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day of
December, 2023.

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc., for)
Authority to Acquire Certain Water and Sewer)
Assets And for Certificates of Convenience)
And Necessity)

File No. WA-2023-0450

**ORDER APPROVING TRANSFER OF ASSETS AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: December 13, 2023

Effective Date: January 12, 2024

Procedural History

On June 30, 2023, Confluence Rivers Utility Operating Company, Inc. (Confluence) filed the above-referenced applications.¹ The applications seek, among other things, authority for Confluence to acquire and operate the sewer systems of Brussels Valley Estates, Inc., (Brussels) and Mapaville Meadows (Mapaville). Confluence also wishes to acquire and operate the water and sewer systems of Chevron/Sierra Land Company, LLC (Johnson Bay).

Confluence also asks for a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems. Confluence is a “water corporation,” a “sewer corporation,” and “public

¹ At Confluence’s request, the Commission consolidated this file with File No. SA-2023-0451.

utility” as those terms are defined in Section 386.020, RSMo (Supp. 2022), and is subject to the jurisdiction of the Commission.

If the Commission approves the application, Confluence would provide sewer service for Brussels’ 13 residential customers, sewer service for Mapaville’s 9 residential customers, and water and sewer service for Johnson Bay’s 63 customers.² In addition, Confluence asks the Commission to waive the 60-day notice requirement it would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On November 28, 2023, the Staff of the Commission (Staff) filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions.

On December 8, 2023, Confluence responded. Confluence stated that its engineering team believes it may take 30 months to bring the Mapaville and Brussels systems into compliance, rather than the 24 months Staff recommended. Confluence states that Staff does not object to the Commission granting Confluence 30 months to bring the Mapaville and Brussels assets into compliance.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”³ The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity that are known as the

² The customer counts are approximate.

³ Section 393.170.3, RSMo. (Supp. 2022).

Tartan factors.

The *Tartan* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.⁴

There is a need for the service, as the residents of Johnson Bay, Brussels, and Mapaville currently use the existing water and sewer systems. Confluence is qualified to provide the service, as it already provides water service to approximately 4,830 Missouri customers, and sewer service to approximately 5,053 Missouri customers. Confluence has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible, as the upgrades and repairs Confluence proposes appear reasonable, and are likely to enable these systems to begin providing safe and adequate service. The proposal promotes the public interest, as the current owners of the Brussels and Mapaville systems, according to Staff's observations, have failed to properly operate and maintain the sewer systems, and Johnson Bay's owners have decided to exit the utility business. Thus, those customers will be better served by Confluence.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to Confluence have been satisfied and that, with the conditions set out by Staff, it is in the public interest for Confluence to provide water and sewer service to the customers served

⁴ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

by Johnson Bay, Brussels, and Mapaville. Further, the Commission finds that Confluence possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase. Thus, the Commission will authorize the purchase of assets and grant Confluence the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Waiver of 60-day notice rule

Confluence's application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). Confluence has filed a verified declaration that it has had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Confluence is granted permission to acquire sewer system assets of Brussels and Mapaville, and the water and sewer system assets of Johnson Bay.
2. Confluence is granted certificates of convenience and necessity to provide sewer service in the Brussels service area, as described in Appendices C and D of the application, the Mapaville service area, as described in Appendices L and M of the application, and water and sewer service in the Johnson Bay areas, as described Appendices H and I of the application, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:
 - a. The Commission approves Confluence's proposed monthly charge for water service, as outlined in Staff's Memorandum, as follows:

Johnson Bay Water - \$27.00 per month (includes 3,000 gallons), \$0.90 per additional 100 gallons used.

- b. The Commission approves Confluence's proposed monthly charges for sewer service, as outlined in Staff's Memorandum, as follows: Johnson Bay Sewer – Flat Rate of \$47.50; Brussels – Flat Rate of \$32.00, Mapaville Sewer – Flat Rate of \$50.00;
- c. Confluence shall submit tariff sheets for each service area, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges;
- d. Confluence shall notify the Commission of closing on the assets within five (5) days after such closing;
- e. If closing on the system assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until Confluence determines that the transfer of the assets will not occur;
- f. If Confluence determines that a transfer of the assets will not occur, Confluence shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the service area in the water and sewer tariffs;
- g. Confluence shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts (USOA);
- h. Confluence shall adhere to the acquisition accounting guidance provided in the USOA so that a request for rate recovery can be properly audited in Confluence's next rate case;
- i. Confluence shall utilize the water and sewer depreciation rates in Exhibit A of the Unanimous Partial Stipulation and Agreement filed in Confluence rate case, Case No. WR-2023-0006, which was approved by the Commission on September 27, 2023;

- j. Confluence shall provide training to its call center personnel regarding rates and rules applicable to the water and sewer customers in the acquired areas;
- k. Confluence shall distribute to the customers in the acquired areas an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets;
- l. Confluence shall provide to the Customer Experience Department ("CXD") Staff an example of its actual communication with each system's customers regarding its acquisition and operations of the water and sewer systems, and how customers may reach Confluence, within 10 days after closing on the assets;
- m. Confluence shall provide to the CXD Staff a sample of 5 billing statements from the first three month's billing for each of the acquired systems within 10 days of the billings;
- n. Confluence shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired system within 10 days after such communications and notifications;
- o. Confluence shall include each system's water and sewer customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
- p. Confluence shall complete repairs and upgrades to the wastewater plant at Brussels, and bring effluent sample readings into DNR compliance within 30 months of closing. Confluence shall notify the manager of the Water, Sewer, and Steam Department upon completion of these repairs and upgrades;
- q. Confluence shall complete repairs to the wastewater plant at Mapaville, and bring effluent sample readings into DNR compliance within 30 months of closing. Confluence shall notify the manager of the Water, Sewer, and Steam Department upon completion of these repairs and upgrades;

3. Confluence is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

4. The 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) is waived.

5. This order shall become effective on January 12, 2024.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Joint Application of Union)
Electric Company, d/b/a Ameren Missouri, and)
Consolidated Electric Cooperative for an Order) **File No. EO-2024-0144**
Approving an Addendum to a Territorial)
Agreement Regarding Service to Customers in)
Audrain County, Missouri)

**REPORT AND ORDER APPROVING ADDENDUM
TO TERRITORIAL AGREEMENT****ELECTRIC****§6. Territorial agreements****§11. Territorial agreements**

The Commission has jurisdiction over territorial agreements and addendums between electrical corporations utilities and rural electric cooperatives.

§6. Territorial agreements**§11. Territorial agreements**

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 13th day of December, 2023.

In the Matter of the Joint Application of Union)
Electric Company, d/b/a Ameren Missouri, and)
Consolidated Electric Cooperative for an Order)
Approving an Addendum to a Territorial)
Agreement Regarding Service to Customers in)
Audrain County, Missouri)

File No. EO-2024-0144

REPORT AND ORDER APPROVING ADDENDUM TO TERRITORIAL AGREEMENT

Issue Date: December 13, 2023

Effective Date: December 23, 2023

On October 27, 2023,¹ Union Electric Company d/b/a Ameren Missouri and Consolidated Electric Cooperative ("Cooperative") (collectively, "Joint Applicants"), jointly filed an application seeking Commission approval of an addendum ("Addendum No. 1") to an existing territorial agreement. The territory subject to Addendum No. 1 concerns two customers located wholly within the service territory of Ameren Missouri in Audrain County, Missouri. The application also requested a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017 and expedited treatment per Commission Rule 20 CSR 4240-2.080(14).²

On April 25, 1997, Joint Applicants entered into a territorial agreement ("Territorial Agreement"), which was approved by the Commission on August 13, 1997, in File No. EO-97-493. Paragraph 9 of the Territorial Agreement allows the Joint Applicants to agree,

¹ Unless otherwise noted, all date references are to the year 2023.

² *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 7 (filed October 27, 2023).

on a case-by-case basis and through an addendum to the Territorial Agreement, to allow a structure to receive service from one party though the structure is located in the electric service territory of the other.

Addendum No. 1 would allow Cooperative to serve two structures within the electric service territory of Ameren Missouri, both single-family homes under construction. The first home ("Location 1") has a physical address of 11370 Audrain Road 929, Mexico, Missouri. The second home ("Location 2") has a physical address of 19570 Highway FF, Mexico, Missouri. The customers impacted by Addendum No. 1 are receiving temporary service from Cooperative and have submitted affidavits expressing their desire to receive permanent electric service from Cooperative. Because the customers are not yet receiving permanent service, Addendum No. 1 does not require transfer of any facilities or customers between Joint Applicants. Accordingly, no changes of suppliers are requested in the application. So that the customers may receive permanent service as soon as possible, the application requests the Commission expedite its decision on the application.

Joint Applicants state in their application that approval of Addendum No. 1 would not be detrimental to the public interest.

Generally, the establishment of exclusive service territories and service rights within a given geographic area prevents future duplication of electric service facilities, resulting in economic efficiencies and future cost savings, and benefit[s] public safety and community aesthetics. In this case, allowing Cooperative to provide service to Locations 1 and 2, even if they are in [Ameren Missouri]'s service territory, accomplishes these goals. The Cooperative maintains existing service lines closer to Locations 1 and 2 than the Company's service lines. Additionally, if Company were to extend service to Locations 1 and 2, it would not only be duplicating facilities, but would have to be adjacent to the Cooperative's existing facilities to do so

and would require extensive new overhead line construction at a significant cost to the homeowner at Locations 1 and 2.³

On November 1, the Commission issued an *Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation*. No parties applied to intervene.

The Staff of the Commission (Staff) filed its *Staff Recommendation* on November 29. In it, Staff agrees with Joint Applicants that approval of Addendum No. 1 is not detrimental to the public interest in that it makes the most efficient use of the existing electric facilities and prevents an otherwise necessary duplication of facilities if Ameren Missouri were to provide electric service to Locations 1 and 2. Staff recommends Commission approval of Addendum No. 1. Staff also agrees with Joint Applicants that good cause exists to support waiver under Commission Rule 20 CSR 4240-4.017(1)(D) of the 60-day notice requirement.

No party filed a response to the *Staff Recommendation*.

FINDINGS OF FACT

1. Ameren Missouri is a Missouri corporation, organized and existing under the laws of Missouri, with its principal office and place of business located at One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103. Ameren Missouri is engaged in providing electric and gas utility services in portions of Missouri as a public utility under the jurisdiction of the Commission.⁴

³ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 7 (filed October 27, 2023).

⁴ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, pp. 3-4 (filed October 27, 2023).

2. Cooperative is a cooperative corporation, organized and existing under the laws of Missouri, with its principal office at 3940 East Liberty, Mexico, Missouri 65265. Cooperative is engaged in the distribution of electric energy and service to its members in all or part of seven Missouri counties.⁵ Cooperative has no final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates that have occurred within three years immediately preceding the filing of the application.⁶ Cooperative is not required to file annual reports or pay assessment fees.⁷

3. Joint Applicants entered into a territorial agreement (“Territorial Agreement”), which was approved by the Commission on August 13, 1997, in File No. EO-97-493.⁸ The Territorial Agreement allows the Joint Applicants to agree, on a case-by-case basis and through an addendum to the Territorial Agreement, to allow a structure to receive service from one party though the structure is located in the electric service territory of the other.⁹

4. Two structures – single-family homes under construction at Mexico, Missouri physical addresses of 11370 Audrain Road 929 and 19570 Highway FF

⁵ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 4 (filed October 27, 2023); *Staff Recommendation, Official Case File Memorandum*, p. 2 (filed November 29, 2023).

⁶ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 5 (filed October 27, 2023); *Staff Recommendation, Official Case File Memorandum*, p. 2 (filed November 29, 2023).

⁷ *Staff Recommendation, Official Case File Memorandum*, p. 2 (filed November 29, 2023).

⁸ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 1 (filed October 27, 2023).

⁹ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 2 (filed October 27, 2023).

(“Locations 1 and 2,” respectively) – lie within the electric service area of Ameren Missouri in Audrain County under the terms of the Territorial Agreement.¹⁰

5. On October 27, Joint Applicants filed an application for Commission approval of an addendum to the Territorial Agreement – Addendum No. 1¹¹ – which would allow Cooperative to serve Locations 1 and 2.¹² Addendum No. 1 is included in the application.

6. Cooperative has existing facilities currently routed on Locations 1 and 2 that have available capacity to provide electric service to the structures on those two parcels.¹³ Cooperative’s facilities are closer to Locations 1 and 2 than those of Ameren Missouri. If Ameren Missouri were to extend service to Locations 1 and 2, extensive new overhead line construction, at a significant cost to the homeowners of Locations 1 and 2, would be necessary and would be duplicating Cooperative’s existing facilities.¹⁴

7. The owners of Location 1 and the owners of Location 2 have signed affidavits requesting that Cooperative provide permanent electric service to their structures at those locations.¹⁵

8. No parties have objected to Joint Applicants’ application.

¹⁰ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 6 (filed October 27, 2023).

¹¹ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, Appendix 2: *Addendum Number 1 to Territorial Agreement Between Union Electric Company d/b/a Ameren Missouri and Consolidated Electric Cooperative* (filed October 27, 2023).

¹² The physical address of Location 1 is stated in Addendum No. 1 as 11370 Audrain Road, Mexico, Missouri, whereas the physical address is stated in Joint Applicants’ application as 11370 Audrain Road 939, Mexico, Missouri. However, the metes and bounds description of Location 1 is also included in Addendum No. 1.

¹³ *Staff Recommendation, Official Case File Memorandum*, p. 3 (filed November 29, 2023).

¹⁴ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, p. 7 (filed October 27, 2023).

¹⁵ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, Appendix 11 and Appendix 12 (filed October 27, 2023).

9. No requests to intervene have been filed in this matter.
10. No party has requested an evidentiary hearing in this matter.
11. With their application, Joint Applicants filed verified declarations that they had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.¹⁶

CONCLUSIONS OF LAW AND DECISION

Section 394.312.1, RSMo 2016, authorizes territorial agreements between rural electric cooperatives and electrical corporations. Before becoming effective, territorial agreements must receive Commission approval by report and order.¹⁷ The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing.¹⁸ The Commission may approve the application if it determines that approval of the territorial agreement, in total, is not detrimental to the public interest.¹⁹

No parties oppose approval of the proposed Addendum No. 1 to the Territorial Agreement, and no requests to intervene have been filed. No evidentiary hearing is required.

The Commission finds that approval of Addendum No. 1 is not detrimental to the public interest in that it makes the most efficient use of the existing electric facilities and prevents an otherwise necessary duplication of facilities if Ameren Missouri were to provide electric service to Locations 1 and 2. Accordingly, the Commission will approve Addendum No. 1.

¹⁶ *Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement*, Appendix 3 and Appendix 4 (filed October 27, 2023).

¹⁷ Section 394.312.4, RSMo 2016.

¹⁸ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

¹⁹ Section 394.312.5, RSMo 2016.

The Commission will grant Joint Applicants' request for waiver of the 60-day case filing notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Joint Applicants' verified declarations that they had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing their application.

So that the customers may obtain permanent service as soon as possible, the Commission will grant the request for expedited treatment. Therefore, the Commission finds it reasonable to make this report and order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. *Addendum Number 1 to Territorial Agreement Between Union Electric Company d/b/a Ameren Missouri and Consolidated Electric Cooperative (Appendix 2 to Joint Request for Waiver, Motion for Expedited Treatment, and Application for Approval of Addendum No. 1 to an Approved Territorial Agreement, filed October 27, 2023), attached to this Order, is approved.*

2. No later than January 22, 2024, Union Electric Company d/b/a Ameren Missouri shall file revised tariff sheets that reflect the change in its certificated electric service area in Audrain County resulting from this Order.

3. No ratemaking determinations are made as part of this Order.

4. The sixty-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).

5. This order shall be effective on December 23, 2023.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

**ADDENDUM NUMBER 1 TO TERRITORIAL AGREEMENT BETWEEN
UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI AND
CONSOLIDATED ELECTRIC COOPERATIVE**

This Addendum No. 1 is entered into between Union Electric Company d/b/a Ameren Missouri ("Company"), and Consolidated Electric Cooperative, ("Cooperative"), hereafter referred to collectively as "Parties."

WHEREAS, the Parties have entered into a Territorial Agreement dated on or about April 25, 1997 ("Territorial Agreement"), which establishes exclusive service areas for each Party;

WHEREAS, said Territorial Agreement was approved by the Missouri Public Service Commission ("Commission") by Report and Order issued on August 13, 1997 and effective on August 26, 1997 in Case No. EO-97-493;

WHEREAS, Paragraph 9 of the Territorial Agreement permits the Parties to agree on a case-by-case basis by an Addendum to the Territorial Agreement to allow a structure to receive service from one party though the structure is located in the exclusive electric service territory of the other;

WHEREAS, Company and Cooperative have not entered into any prior Addendum to the Territorial Agreement;

WHEREAS, Derek & Kyleigh Miller have requested electric service to a structure with a physical address of 11370 Audrain Road, Mexico, Missouri, a location within the designated exclusive service territory of Company ("Miller Structure");

WHEREAS, as demonstrated in Exhibit A, the Cooperative has facilities physically closer than those of Company the structure, making it more economic for Cooperative to serve the Miller Structure;¹

WHEREAS, Heath & Rebekah Hudson have requested electric service to a structure with a physical address of 19570 Highway FF, Mexico, Missouri, a location within the designated exclusive service territory of Company ("Hudson Structure"); and

¹ Cooperative already has services lines adjacent to the structure. The Company would need to build approximately 0.5 miles of overhead system to provide service to Customer, which would not be in the public interest. It is more cost effective for the Customer for Cooperative to extend service to the structure than for the Company to do so.

WHEREAS, as demonstrated in Exhibit B, the Cooperative has facilities physically closer than those of Company the structure, making it more economic for Cooperative to serve this structure;²

NOW, THEREFORE, Company and Cooperative, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. Both Parties desire and consent to Cooperative providing electric service to the Miller Structure with a physical address of 11370 Audrain Road, Mexico, Missouri through the case-by-case addendum procedure contained in Paragraph 9 of the Territorial Agreement. Notwithstanding the boundaries described in the Territorial Agreement, Cooperative shall have the right to serve the structure.

2. A metes and bounds description of the area encompassing the Miller Structure to be transferred is attached hereto as Exhibit C.

3. Both Parties desire and consent to Cooperative providing electric service to the Hudson Structure with a physical address of 19570 Highway FF, Mexico, Missouri through the case-by-case addendum procedure contained in Paragraph 9 of the Territorial Agreement. Notwithstanding the boundaries described in the Territorial Agreement, Cooperative shall have the right to serve the structure.

4. A metes and bounds description of the area encompassing the Hudson structure to be transferred is attached hereto as Exhibit D.

5. The exclusive territories of the Parties, as described in the Territorial Agreement, are not modified by this Addendum. In executing this Addendum, its terms shall be interpreted in light of the Territorial Agreement, including, but not limited to, the definitions, principles, and procedures set forth therein.

6. Since this Addendum is subject to the approval of the Commission, the Parties agree to undertake all actions reasonably necessary to obtain said approval. In addition, each Party has the right to initiate temporary service, as defined by RSMo. Section 394.315, at its own expense, until the Commission approves or disapproves the Addendum.

² Cooperative already has services lines adjacent to the structure. The Company would need to build in excess of 0.5 miles of overhead system to provide service to Customer, which would not be in the public interest. It is more cost effective for the Customer for Cooperative to extend service to the structure than for the Company to do so.

7. THIS ADDENDUM SHALL BE DEEMED APPROVED BY THE COMMISSION STAFF OR THE OFFICE OF THE PUBLIC COUNSEL IF SAID PARTIES DO NOT SUBMIT A PLEADING OBJECTING TO THE ADDENDUM WITHIN FORTY-FIVE (45) DAYS OF THE FILING THEREOF.

8. If the Commission rejects this or any portion of this Addendum, then the entire Addendum shall be nullified and shall have no legal effect. Further, if all or part of this Addendum is declared invalid or void by a Court or other agency with competent jurisdiction, then this Addendum shall be deemed invalid and void.

9. This Addendum may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

(remainder of page intentionally left blank -- signatures follow on next page)

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Establishment of a	)	
Working Case Regarding FERC Order 2222	)	
Regarding Participation of Distributed Energy	)	<u>File No. EW-2021-0267</u>
Resource Aggregators in Markets Operated	)	
by Regional Transmission Organizations and	)	
Independent System Operators	)	

ORDER GRANTING CLARIFICATION

ELECTRIC

§1. Generally

§9. Jurisdiction and powers of the State Commission

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

§1. Generally

§9. Jurisdiction and powers of the State Commission

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

§1. Generally

§46. Relations between connecting companies generally

§48. Contracts

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

§9. Jurisdiction and powers of the State Commission

The Commission clarified that utilities should take the steps necessary to ensure they are meeting their commitments to implement data sharing protocols in compliance with applicable standards, not that all utilities needed full adoption immediately.

§9. Jurisdiction and powers of the State Commission

§46. Relations between connecting companies generally

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

PUBLIC UTILITIES**§3. Functions and powers****§7. Jurisdiction and powers of the State Commission****§23. Particular organizations generally**

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

RATES**§3. Jurisdiction and powers of the State Commission****§6. Limitations on jurisdiction and power****§62. Initiation of rates and rate changes****§104. Electric and power**

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

§19. Contract or franchise rate**§98. Wholesale rates****§104. Electric and power**

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

§98. Wholesale rates**§104. Electric and power**

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day
of December 2023.

In the Matter of the Establishment of a)
Working Case Regarding FERC Order 2222)
Regarding Participation of Distributed)
Energy Resource Aggregators in Markets)
Operated by Regional Transmission)
Organizations and Independent System)
Operators)

File No. EW-2021-0267

ORDER GRANTING CLARIFICATION

On November 8, 2023, Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) (collectively, Evergy) filed a *Motion for Clarification* regarding the Commission's *Order Partially Modifying the Commission's 2010 Order Regarding ARCs* (Order) filed in this docket on October 12, 2023.

The Commission's Staff, along with Voltus, Inc. and Enerwise Global Technologies, LLC, d/b/a CPower filed responses to Evergy's motion. In its response, Voltus concurred with Evergy that clarification of some of the points raised by Evergy would be helpful to Voltus' understanding and application of the Commission's Order. On November 29, 2023, the Commission issued an order extending the effective date of its partial modification Order to January 1, 2024, so that the Commission may have time to consider Evergy's motion and the responses. The Commission will provide clarification to the questions raised in Evergy's motion.

Secure Transfer of Customer Data

The Commission stated in its Order that “Missouri’s utilities are utilizing Green Button functionality that should allow for secure transfer of customer data to third parties.” However, Evergy stated in its motion that “[w]hile Evergy has adopted the Green Button platform, the Green Button capabilities are only available to residential and small and medium business customers. Therefore, Evergy will continue to utilize its Customer Data Authorization form as necessary for those C&I customers that cannot access the Green Button functionality.” The Commission understands that while each of the utilities has made commitments to implement Green Button functionality, the level of adoption may be varied, not currently available to all customer segments, and at different stages of implementation.

Missouri’s utilities should take the steps necessary to ensure they are meeting their commitments to implement data sharing protocols in compliance with applicable standards (e.g., Green Button) and making available the capabilities the platform offers and that all applicable customers under the Order have some means to securely transfer their customer data to third parties. Additionally, the Commission will direct its Staff to review, no later than during each electric utility’s next general rate case, each electric utility’s Green Button implementation progress and any alternative practices for allowing customers to securely transfer their data to third parties to ensure they are sufficient to meet customer needs.

Dual Participation

As stated in the Commission’s Order, “this modification allowing C&I customers to participate in wholesale demand response programs does not include C&I customers

participating in retail demand response programs.” Therefore, the Order restricts a unique customer from dual participation in both the wholesale market directly or through a third-party aggregator of retail customers (ARC) and retail utility programs. As further stated in the Order, however, the Commission will continue to evaluate dual participation for future consideration.

Same Corporate Umbrella

As stated in the Commission’s Order: “A customer with multiple sites under the same corporate ownership may aggregate multiple sites within an electric utility’s service area to meet this minimum size requirement.” The Commission clarifies that the aggregator must provide evidence to the utility and the Commission during the Regional Transmission Organization (RTO) registration process that demonstrates the corporate relationship of the customers at multiple sites being aggregated and is sufficient to allow the utility and the Commission to confirm the eligibility of the customers included in the aggregation during the RTO registration and review process. The demonstrative information may include, for example, documentation identifying which sites fall under a single billing address or corporate parent company.

Same Utility Service Area

As Staff noted in its response to Evergy’s motion, Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas. Therefore, Evergy Metro and Evergy West will be treated as separate utilities under the Order.

Evergy’s Special Rate for Incremental Load Service (SIL) tariff

Evergy’s Special Rate for Incremental Load Service (SIL) tariff is designed to provide certain customers access to a special rate that is not based on the company’s

cost of service. The tariff currently provides that service under the SIL tariff may not be combined with, among other things, participation in programs related to demand response, unless otherwise ordered by the Commission when approving a contract for service under the SIL tariff. The Commission's Order only modifies the 2010 prohibition on ARCs and does not modify or change the terms of any utility tariff or any contract for service under the SIL tariff. However, the Commission will direct its Staff to review, in each electric utility's next general rate case, the SIL tariff and/or any other special rate tariffs with the same or similar prohibitions on customers participating in programs related to demand response, and recommend to the Commission whether such prohibitions are still reasonable and as narrowly tailored as possible to ensure that as many customers as possible have the option of participating in wholesale demand response programs through an ARC.

Evergy's Market Based Demand Response (MBDR) Program

Evergy's Market Based Demand Response Program (MBDR) is a utility program structured through Evergy's membership and participation in the Southwest Power Pool (SPP) that offers qualified business demand response participants an additional opportunity to participate with the utility in the SPP's wholesale energy market as described in Evergy's MBDR tariff. As explained above, the Commission's Order in this docket does not modify or change the terms of any utility tariff.

Movement Between Retail and Wholesale Demand Response Programs

Because the Order does not change or modify any utility tariff or currently effective contract, movement between retail and wholesale demand response programs continues to be governed by any relevant rules, tariffs or contracts. As Staff notes in its response,

the Commission may consider this issue in utility tariff filings. The Commission will direct its Staff to review any applicable tariffs in future proceedings to ensure that the tariff language clearly delineates when and under what conditions a customer can leave a utility demand response program.

THE COMMISSION ORDERS THAT:

1. Everygy's motion for clarification is granted as set out above.
2. This order shall be effective immediately upon issuance.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Dippell, Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Evergy	)	
Missouri West, Inc. d/b/a Evergy Missouri	)	
West for a Financing Order Authorizing the	)	<u>File No. EF-2022-0155</u>
Financing of Extraordinary Storm Costs	)	
Through an Issuance of Securitized Utility	)	
Tariff Bonds	)	

ORDER NUNC PRO TUNC

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§24. Procedures, evidence and proof

§27. Finality and conclusiveness

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its Office
in Jefferson City, Missouri on
the 13th day of December,
2023.

In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri)
West for a Financing Order Authorizing the)
Financing of Extraordinary Storm Costs)
Through an Issuance of Securitized Utility)
Tariff Bonds)

File No. EF-2022-0155

ORDER NUNC PRO TUNC

Issue Date: December 13, 2023

Effective Date: December 13, 2023

On November 1, 2023, Evergy Missouri West, Inc. d/b/a Evergy Missouri West filed a motion requesting an order nunc pro tunc to correct an internal inconsistency in the Commission's *Amended Report and Order*. Ordered paragraph 9, Imposition and Collection, is not consistent with ordered paragraph 8, Approval of Tariff, in the Commission's November 17, 2022, *Amended Report and Order*, concerning how partial payments are addressed.

Ordered paragraph 8, on page 113 of the *Amended Report and Order*, approved the attached Appendix B, Securitized Utility Tariff Rider, as to form. That Securitized Utility Tariff Rider contained Additional Terms addressing how partial payments are addressed.¹

Ordered paragraph 9, beginning on page 113 of the *Amended Report and Order*,

¹ Securitized Utility Tariff Rider, Appendix B, *Amended Report and Order*, Additional Terms, 1. Treatment of partial payments on customer bills – The first dollars collected would be attributed to past due balances, if any. To the extent that a customer remits an amount less than the full amount due for a given prior or current period, the charges under Schedule SUR shall be prorated with other amounts due for that given prior or current period bill.

states in its last sentence: "If there is a partial payment of an amount billed, the amount paid must first be apportioned ratably between the securitized utility tariff charges and other fees (excluding any late fees), and second, any remaining portion of the payment must be allocated to late fees." This sentence is inconsistent with the how partial payments are addressed under the Securitized Utility Tariff Rider. Evergy Missouri West has requested that the Commission correct its order by striking the inconsistent sentence from ordered paragraph 9.

Evergy Missouri West's motion expressed that the Staff of the Commission did not object to the request. The Commission set a time for any responses to Evergy Missouri West's motion, but received none.

Therefore, page 114, ordered paragraph 9, of the *Amended Report and Order* where it stated:

9. Imposition and Collection. Evergy West is authorized to impose on and the servicer is authorized to collect from all existing and future retail customers located within Evergy West's service area as such service area exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized utility tariff charges in an amount sufficient to provide for the timely recovery of the aggregate total securitized revenue requirements (including payment of principal of and interest on the securitized utility tariff bonds), as approved in this Financing Order. If there is a partial payment of an amount billed, the amount paid must first be apportioned ratably between the securitized utility tariff charges and other fees (excluding any late fees), and second, any remaining portion of the payment must be allocated to late fees.

is hereby corrected to read:

9. Imposition and Collection. Evergy West is authorized to impose on and the servicer is authorized to collect from all existing and future retail customers located within Evergy West's service area as such service area exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized

utility tariff charges in an amount sufficient to provide for the timely recovery of the aggregate total securitized revenue requirements (including payment of principal of and interest on the securitized utility tariff bonds), as approved in this Financing Order.

THE COMMISSION ORDERS THAT:

1. The *Amended Report and Order* issued November 17, 2022, is corrected nunc pro tunc as set forth in the body of this order and in the *Nunc Pro Tunc Amended Report and Order* attached to this order.
2. This order shall be effective when issued.



BY THE COMMISSION

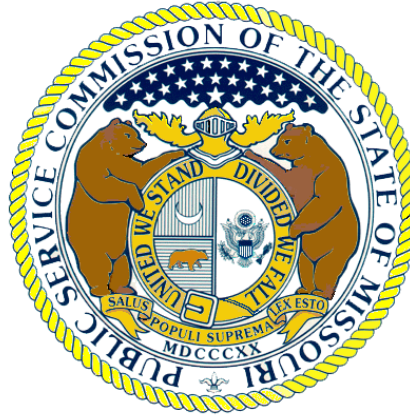
Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Evergy)
Missouri West, Inc. d/b/a Evergy Missouri West)
for a Financing Order Authorizing the)
Financing of Extraordinary Storm Costs)
Through an Issuance of Securitized Utility)
Tariff Bonds)

File No. EF-2022-0155

NUNC PRO TUNC AMENDED REPORT AND ORDER*

Issue Date: November 17, 2022

Effective Date: November 27, 2022

* On December 13, 2023, the Commission corrected its *Amended Report and Order* nunc pro tunc. That correction on page 114 of this order is described in the Commission's December 13, 2023, *Order Nunc Pro Tunc*.

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SENIOR REGULATORY LAW JUDGE: John T. Clark

FINANCING ORDER

Procedural History

On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) submitted to the Commission a petition for a financing order, seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Evergy West on behalf of its customers during the mid-February 2021 cold weather event known as Winter Storm Uri. Evergy West filed that petition under Section 393.1700, RSMo. (Securitization Law).

The Commission granted intervention to Midwest Energy Consumers' Group (MECG); The Missouri Industrial Energy Consumers (MIEC); Nucor Steel Sedalia, LLC (Nucor); and Velvet Tech Services, LLC (Velvet).

The parties prefiled direct, rebuttal, and surrebuttal testimony.¹ An evidentiary hearing was held August 1, 2022, through August 4, 2022. The parties filed post-hearing briefs on August 31, 2022, and reply briefs on September 12, 2022.²

Proposed Stipulation and Agreement

On the first day of the evidentiary hearing, Evergy West, the Staff of the Commission (Staff), and the Office of the Public Counsel (Public Counsel) submitted a *Non-Unanimous Stipulation and Agreement* (Stipulation) setting forth negotiated resolutions to certain contested issues among its signatories. MECG, Nucor, and Velvet were not signatories to the Stipulation, but affirmatively represented that they did not oppose it. The Stipulation did not include a proposed financing order, providing instead

¹ MIEC did not file testimony or a position statement, and the Regulatory Law Judge granted MIEC's request to be excused from the evidentiary hearing.

² The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

that the signatories agreed to modify the proposed financing order previously filed by Evergy West in order to (i) comply with the Securitization Law, (ii) incorporate the terms of the Stipulation and (iii) resolve cost recovery issues that remained contested. Some terms agreed in the Stipulation lacked sufficient detail to adequately resolve an issue, particularly those requiring a dollar amount. Despite the omission of a proposed financing order and certain imprecise terms, the Stipulation provided that it must be unconditionally approved by the Commission, without modification, or would be rendered void.

The Commission did not oppose the parties' efforts to reach agreement on certain contested issues, nor was the Commission dissatisfied with the terms of the Stipulation when complete. However, as proposed by the Stipulation, the Commission would be approving a financing order developed by the signatories that had yet to be written, and it is unclear if the Commission would be able to modify that financing order. The Commission will not approve the Stipulation because it is incomplete without a financing order and provided for no opportunity for Commission examination and input on the financing order.

Post-Order Motions

The Commission issued its Report and Order on October 7, 2022, to be effective on November 6, 2022. Evergy West, Staff, and Public Counsel filed timely applications for clarification and rehearing. Evergy West filed a response opposing parts of Public Counsel's clarification and rehearing application. After reviewing the clarification and rehearing motions, and Evergy West's response, the Commission has decided to amend its order to clarify the customary method of ratemaking, tax deduction issues, resource planning issues, and to correct an ordered paragraph. This Amended Report and Order

will be effective in ten days. If anyone believes that rehearing, reconsideration, or clarification is needed, they must file a new or renewed application for rehearing, reconsideration, or clarification before the effective date of this order.

Description of Securitization

Findings of Fact

1. In February 2021, Missouri was impacted by a severe winter weather event causing record sub-zero temperatures, snow and ice accumulation, and high winds. This cold weather occurrence from February 10, 2021 to February 19, 2021 is known as Winter Storm Uri (Winter Storm Uri).³

2. Evergy West seeks to recover qualified extraordinary costs resulting from Winter Storm Uri pursuant to the Securitization Law through the issuance of securitized utility tariff bonds.⁴

3. Securitization is a process authorized for the first time in Missouri by the legislature in the 2021 general legislative session with the adoption of the Securitization Law.⁵

4. Securitization is the financing of the purchase of a property right from a utility with the proceeds of securities issued by an entity whose credit quality is separated from that of the utility to attain higher credit ratings and lower financing costs. The utility sells the revenue stream and other entitlements and property created by a financing order, known as securitization property, to a newly established bankruptcy-remote special purpose entity (SPE) in a transaction that is a “true sale” for bankruptcy purposes.⁶

³ Ives Direct, Ex. 8, Pages 6-14.

⁴ Lunde Direct, Ex. 13, Schedule SL-2, Financing Order, Page 3.

⁵ HB 734, Section 393.1700, RSMo, effective August 28, 2021.

⁶ Lunde Direct, Ex. 13, Page 6, Lines 6-11.

5. A “true sale” transaction passes title, legal and equitable, to a SPE entity so that a bankruptcy court would not be expected to overturn the transaction and declare securitization property to be owned by a debtor utility in the event of bankruptcy and therefore subject to creditor actions.⁷

6. The securitization property will be composed of Eversource West’s rights and interests created under this Financing Order, including the irrevocable right to impose, bill, charge, collect, and receive from Eversource West’s retail electric customers the Securitized Utility Tariff Charge (SUTC), in amounts sufficient to pay principal and interest on the securitization bonds when due and ongoing financing costs.⁸

7. The SUTC will be paid by all existing and future retail customers receiving electrical service from Eversource West or its successors or assignees.⁹

8. Pursuant to the Securitization Law, Eversource West will transfer the irrevocable right to impose, bill, charge, collect and receive the SUTC and its other rights under the financing order to a newly created SPE to separate securitization bonds from Eversource West’s credit.¹⁰

9. The SPE is formed to acquire the securitization property, issue the securitization bonds, pledge its assets to the trustee under the indenture, enter into related contracts, and perform other limited activities related to those basic purposes. The SPE is prohibited from engaging in other activities and will have no assets other than the

⁷ Lunde Direct, Ex. 13, Page 31, Lines 20-23.

⁸ Lunde Direct, Ex. 13, Page 7, Lines 20-23.

⁹ Klotz Direct, Ex. 11, Page 4, Lines 8-12. One Eversource West customer is served under a special contract established prior to August 28, 2021, and is exempted from the SUTC by statute.

¹⁰ Lunde Direct, Ex. 13, Page 28, Lines 6-8.

securitization property and related assets. Obligations relating to the securitization bonds are the SPE's only significant liabilities.¹¹

10. Under securitization the Commission authorizes the issuance of securitization bonds to finance the recovery of qualified extraordinary costs. The issuance of securitization bonds mitigates rate increases that would otherwise be necessary to recover those costs.¹²

11. Securitization will allow Evergy West to immediately recover extraordinary costs from Winter Storm Uri, including carrying costs from the date those costs were incurred to the date the securitization bonds are issued.¹³

12. Securitization saves ratepayers money because the costs of securitization are lower than customary ratemaking. The interest rate paid on AAA rated securitization bonds is lower than the interest rate that would be applied to Evergy West's carrying costs if recovered through customary ratemaking.¹⁴

Conclusions of Law

A. Evergy West is an electric corporation as defined in Section 386.020(15), RSMo.

B. Section 393.1700.2(2) allows an electrical corporation, which includes Evergy West, to petition the Commission for a financing order to allow for issuance of "securitized utility tariff bonds" to finance "qualified extraordinary costs."

C. "Qualified extraordinary costs" are defined in Section 393.1700.1(13) as:

Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if

¹¹ Lunde Direct, Ex. 13, Page 31, Lines 13-19.

¹² Klote Direct, Ex. 11, Page 6, Lines 16-20.

¹³ Ives Direct, Ex. 8, Page 16, Lines 6-9.

¹⁴ Ives Direct, Ex. 8, Page 16-17, Lines 2-22, 1-16.

reflected in retail customer rates recovered through customary ratemaking, such as but not limited to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events;

D. The term “bonds” means securitization bonds or securitized utility tariff bonds as defined in Section 393.1700.1(15) RSMo.

E. The term “Securitization Property” means securitized utility tariff property or securitization property as defined in Section 393.1700.1(18) RSMo.

F. “Securitized utility tariff charge” is defined in Section 393.1700.1(16) as:

the amounts authorized by the Commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state;

G. Evergy West sought to securitize “qualified extraordinary costs” associated with the anomalous weather event of February 2021, known as Winter Storm Uri, in its petition in this file, File No. EF-2022-0155.

Contested Issues

The Securitization Law mandates that a financing order regarding the petitions for securitization authority include certain findings and other provisions. This Financing Order will meet all requirements of the statute. Not all of those requirements are contested. The order will first address the issues contested by the parties and then will address the additional statutory requirements that were not contested.

1. What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize Evergy West to finance using securitized utility tariff bonds?

Findings of Fact¹⁵

13. In February 2021, Missouri was impacted by a severe winter weather event causing record sub-zero temperatures, snow and ice accumulation, and high winds. This cold weather occurrence from February 10, 2021, through February 19, 2021, is referred to as Winter Storm Uri. During Winter Storm Uri, Missouri, including Evergy West's service area,¹⁶ experienced exceedingly cold temperatures, rolling electrical blackouts, and extreme natural gas prices.¹⁷

14. Evergy West is a member of the Southwest Power Pool, Inc. (SPP), a regional transmission organization (RTO) that exists to ensure the reliable supply of power and adequate transmission infrastructure as well as competitive wholesale electricity prices.¹⁸

15. February 2021 was among the ten coldest Februarys on record for Missouri, according to the National Oceanic and Atmosphere Administration. Temperatures for the period from February 6, 2021, to February 19, 2021, averaged more than 20 degrees below normal, the coldest 2-week period to impact Missouri in over 30 years, according to the Missouri Climate Center at the University of Missouri, College of Agriculture.¹⁹

¹⁵ Issues are divided for purposes of organization and clarity. Findings of fact are cumulative; each set of findings incorporates findings stated for any previous issues.

¹⁶ Ives Direct, Ex. 8, Pages 6-14.

¹⁷ Ives Direct, Ex. 8, Page 6, Lines 7-18.

¹⁸ Ives Direct, Ex. 8, Page 7, Lines 2-6.

¹⁹ Ives Direct, Ex. 8, Pages 12-13, Lines 12-19, 3-6.

16. On February 14, 2021, SPP declared an Energy Emergency Alert that it was expecting weather conditions where all available resources would be needed to meet firm load obligations, and that it might not be able to sustain contingency reserves.²⁰

17. On February 15, 2021, SPP declared an Energy Emergency Alert that its operating reserves fell below the required minimum. SPP committed all of its reserves and exhausted other avenues, resulting in it directing its members to implement controlled interruptions. Evergy West started to shed load at approximately noon and began customer service interruptions.²¹ As the cold weather conditions persisted, Evergy West was again instructed to shed load on the morning of February 16, 2021, and Evergy West again interrupted service to customers.²²

18. Evergy West continuously served customers during February 2021, with the exception of the above two load shedding events.²³

19. Due to the extreme cold weather brought on by Winter Storm Uri, the price of natural gas increased dramatically. These higher fuel costs resulted in day-ahead and real-time electricity prices reaching SPP record highs of \$4,393/MWh (February 18, 2021) and \$4,029/MWh (February 16, 2021), respectively.²⁴

20. Evergy West incurred approximately \$11.8 million in fuel costs (an increase of \$8.3 million from its average February fuel costs over 2018-2020), and \$314.6 million in purchased power costs (an increase of \$299.8 million from its average February purchased power costs). After adjustments for transmission costs, disallowances, and

²⁰ Ives Direct, Ex. 8, Page 7, Lines 6-10.

²¹ Ives Direct, Ex. 8, Page 8, Lines 2-10.

²² Ives Direct, Ex. 8, Pages 8-9, Lines 17-20, 1-6.

²³ Ives Direct, Ex. 8, Page 9, Lines 18-19.

²⁴ Ives Direct, Ex. 8, Pages 11-12, Lines 15-20, 1-3.

off-system sales revenue, Evergy West's total energy costs were \$315.0 million, an increase of \$296.5 million from its average February total energy costs.²⁵ Evergy West seeks to recover \$295.5 million in fuel costs along with \$54.6 million in carrying costs as "qualified extraordinary costs" under the Securitization Law.²⁶

21. Recovering \$295.5 million plus carrying costs through Evergy West's fuel and purchased power adjustment clause (FAC) would be harmful to Evergy West's customers. The FAC is intended to recover costs incurred during a six-month period over a subsequent twelve-month period. Recovering the entirety of the Winter Storm Uri costs through the FAC would create extreme customer rate impacts.²⁷

22. Recovering Winter Storm Uri costs and revenues through FAC is not in the best interest of Evergy West or its customers, because of the extraordinary amount of costs that were incurred.²⁸

23. In total, Evergy West seeks authority to securitize \$356,720,636 for costs related to Winter Storm Uri. This amount includes \$296,638,919 for fuel costs before applying the 99.62 percent retail energy allocator, \$54,569,187 for carrying costs, and \$6,639,758 in up-front financing costs. The total amount also removes non-fuel operation and maintenance costs of \$274,934 that Evergy West originally sought to recover in its direct filing.²⁹

²⁵ Ives Direct, Ex. 8, Page 14, Lines 12-17.

²⁶ Klote Surrebuttal, Ex. 12, Page 14 Table 1

²⁷ Ives Direct, Ex. 8, Page 15, Lines 20-22.

²⁸ Klote Direct, Ex. 11, Page 7, Lines 16-20.

²⁹ Klote Surrebuttal, Ex.12, Pages 13-14, Lines 18-19 and Table 1.

Conclusions of Law³⁰

H. Section 393.1700.1(13) defines “qualified extraordinary costs as:

Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

I. Section 393.1700.2(2), RSMo sets out the content that must be included in a utility’s petition for a financing order to finance qualified extraordinary costs.

J. The Commission has previously issued a financing order authorizing the cost recovery of qualified extraordinary costs for Winter Storm Uri through securitization for another Missouri electric utility in File No. EO-2022-0040.³¹

Decision³²

The Commission finds, based on the decisions in the following subsections, that Evergy West’s costs in the amount of \$307,811,246³³ incurred in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are “qualified extraordinary costs” as defined in Section 393.1700.1(13), RSMo. The Commission finds that the recovery of this amount is just and reasonable, and in the public interest. The Commission further finds that Winter Storm Uri was an “anomalous weather event” within the meaning of that statutory definition.

³⁰ Issues are divided for purposes of organization and clarity only. Conclusions of law are cumulative; each set of conclusions incorporates conclusions stated for any previous issues, as necessary. Some issues may not require additional conclusions of law.

³¹ EO-2022-0040, Amended Report and Order, issued September 22, 2022.

³² The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.

³³ Qualified extraordinary costs of \$307,811,246 based on the sum of \$280,667,566 in fuel and purchased power costs and \$27,143,680 in carrying costs.

A) What amount of the costs, if any, that Evergy West is seeking to securitize would Evergy West recover through customary ratemaking?

B) What is the appropriate method of customary ratemaking absent securitization? What is the appropriate method of customary ratemaking absent securitization?

C) Under Section 393.1700.2(2)(e), 1 what is the “customary method of financing”? What are the costs that would result “from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates”?

D) Should Evergy West’s recovery include more than 95% of fuel and purchased power costs? Should Evergy West’s recovery through securitized bonds include more than 95% of fuel and purchased power costs?

These four sub-issues are interrelated and the Commission will address them together.

Findings of Fact

24. The Commission authorized Evergy West to defer \$297,316,445 of extraordinary costs from its FAC associated with Winter Storm Uri from its Accumulation Period 28, which encompassed the six-month period from December 2020 through May 2021. \$6,588,116 of fuel and purchased power costs were approved to be passed through the FAC and were not considered extraordinary costs.³⁴

25. Evergy West calculated the extraordinary cost amount to be removed from Accumulation Period 28 by calculating a three-year average baseline for February costs, using actual February costs for fuel, purchased power, emissions, transmission expense, and off-system sales revenues for the years 2018 through 2020.³⁵

³⁴ Fortson Rebuttal, Ex. 102, Page 2, Lines 6-9 and footnote 2, and Order Approving Fuel Adjustment True-up and Approving Tariff to Change Fuel Adjustment Rates, File No. ER-2022-0005 (Aug. 18, 2021).

³⁵ Fortson Rebuttal, Ex. 102, Page 3, Lines 18-21.

26. Eversource West incurred approximately \$11.8 million in fuel costs, which is an increase of \$8.3 million from its average February fuel costs over the three years from 2018 to 2020. Eversource West incurred approximately \$314.6 million in purchased power costs, which is an increase of \$299.8 million from its February average. After adjustments for transmission costs, disallowances,³⁶ and off-system sales revenue, Eversource West's total energy costs were \$315.0 million, an increase of \$296.5 million from its average February total energy costs.³⁷

27. Eversource West incurred approximately \$296.5 million in extraordinary fuel and purchased power costs for its Missouri customers during Winter Storm Uri, of which \$295.5 million was allocated to its retail customers based on a 99.62 percent retail energy allocator.³⁸

28. Customarily, Absent securitization, Eversource West would file a fuel adjustment tariff designed to recover 95 percent of the energy cost differences from base rates. A fuel adjustment tariff filing is the customary procedure to recover fuel and purchased power costs or to credit revenues. A significant portion of cost recovery occurs in the first year for recovery following an expense through a FAC filing.³⁹

29. Eversource West's FAC was first established in 2007.⁴⁰ Every Eversource West general rate case since then has included a 95/5 sharing mechanism in Eversource West's FAC tariff.⁴¹

³⁶ Disallowances as used here refers to disallowances as understood by Eversource West as part of its direct filing, and not the Commission's approved disallowances included in this order.

³⁷ Ives Direct, Ex. 8, Page 14, Lines 12-17.

³⁸ Klote Surrebuttal, Ex. 12, Page 14, Table 1.

³⁹ Klote Direct, Ex. 11, Pages 8-9, Lines 22-23, 1-2.

⁴⁰ Eversource West was then known as Aquila, and then KCP&L Greater Missouri Operations, before finally becoming Eversource Missouri West.

⁴¹ Fortson Rebuttal, Ex. 102, Page 10, Lines 3-17.

30. Evergy West's FAC does not allow it to recover 100 percent of its fuel and purchased power costs. Evergy West's FAC requires it to accumulate its actual net energy costs over a six-month accumulation period, followed by a twelve-month recovery period during which the amount of actual net energy costs over the net base energy costs is reduced by a jurisdictional factor, and then 95 percent of that difference is either returned to or collected from customers.⁴²

31. Evergy West's FAC requires it to retain 5 percent of any overcollected amounts or absorb 5 percent of any undercollected amounts for each accumulation period.⁴³

32. The Commission included the 95/5 sharing mechanism in Evergy West's FAC to protect it from extreme fluctuations in fuel and purchased power costs while providing the company an incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and yet still have an opportunity to earn a fair return on its investment.⁴⁴

33. If Evergy West were allowed to recover 100 percent of its fuel and purchased power costs, regardless of how high fuel costs go, it would be less incentivized to keep its fuel and purchased power costs as low as possible. Evergy West would bear no risk for those costs and all the costs and risk for Evergy West's fuel and purchased power decisions would shift to ratepayers.⁴⁵

34. Another mechanism Evergy West could use to recover qualified extraordinary costs is to use an accounting authority order (AAO) to defer and amortize

⁴² When combined with an interest calculation and true-up adjustment.

⁴³ Fortson Rebuttal, Ex. 102, Pages 7-8, Lines 18-23, 1.

⁴⁴ Fortson Rebuttal, Ex. 102, Pages 12-13, Lines 15-21, 1-3.

⁴⁵ Fortson Rebuttal, Ex. 102, Page 13, Lines 16-19.

the costs over a specified period of time. An AAO is merely a deferral mechanism that permits the deferral of costs from one period to another. Deferred costs are booked as assets rather than expenses, and the Commission determines in a future rate case what deferred costs, if any, may be recovered in rates.⁴⁶

35. Recovery through an AAO, if granted, would amortize extraordinary costs, including carrying costs, in the revenue requirement calculations in a future rate case filing where the Commission could allow those costs to be recovered over a specified period of time.⁴⁷ Staff would likely recommend at least a 15-year amortization period, with carrying costs calculated at the company's long-term debt rate.⁴⁸ Due to the extraordinary amount of the fuel and purchased power it incurred in February 2021 resulting from Winter Storm Uri, Eversource West sought to defer the fuel and purchased power costs associated with this event to an AAO for consideration in a future rate case in File No. EU-2021-0283. That AAO case is still pending, but Eversource West would not need to defer any costs in that case if it moves ahead with securitization under this Financing Order.⁴⁹

36. If an AAO was established, Staff would not recommend deferral or recovery of the five percent of the utility's share of fuel and purchased power costs under the FAC. Staff contends that not allowing recovery of the five percent of the fuel and purchased power costs represents an appropriate sharing of the financial impacts of Winter Storm Uri between ratepayers and shareholders.⁵⁰

⁴⁶ Bolin Rebuttal, Ex. 100, Page 5, Lines 11-16.

⁴⁷ Klote Direct, Ex. 11, Page 9, Lines 10-14.

⁴⁸ Bolin Rebuttal, Ex. 100, Page 7, Lines 1-11.

⁴⁹ Bolin Rebuttal, Ex. 100, Pages 5-6, Lines 7-16, 1-21.

⁵⁰ Bolin Rebuttal, Ex. 100, Page 8, Lines 2-9.

37. Applying the same sharing incentive for Winter Storm Uri costs will give Eversource West an incentive to plan for and to efficiently manage extraordinary events that impact fuel and purchased power, which are its biggest costs.⁵¹

38. Staff proposes a disallowance of \$14,771,657.61, which is 5 percent of the total deferred fuel and purchased power costs for Winter Storm Uri, excluding non-fuel operation and maintenance costs, after applying the Missouri jurisdictional factor and retail energy allocator.⁵²

Conclusions of Law

K. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for “periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs.” That section also allows the Commission to “include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities.” The 95/5 sharing provision in Eversource West’s FAC tariff is designed to provide such an incentive.

L. In its report and order that initially established Eversource West’s FAC, the Commission found that “a prudence review can be expected to evaluate the major decisions a utility makes. However, a utility makes thousands of small decisions every hour regarding fuel, purchased power, and off-system sales. It is not practical to expect a prudence review to uncover and evaluate every one of those decisions.”⁵³

⁵¹ Mantle Rebuttal, Ex. 201, Page 27, Lines 16-20.

⁵² Fortson Rebuttal, Ex. 102, Page 8, Lines 1-5.

⁵³ *In the Matter of The Empire District Electric Company’s Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 17, Mo. P.S.C. 631, 667 (2008)

M. Commission Rule 20 CSR 4240-20.090(8)(A)2.A(XI) provides that extraordinary costs are not to be passed through the company's FAC.

N. The securitization statute, Section 393.1700.2(3)(c) requires a financing order issued by the Commission to include all of the following elements:

a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and a finding that recovery of such costs is just and reasonable and in the public interest*. The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;

b. *A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.* Notwithstanding any provisions of this section to the contrary, in considering whether to find the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds; ...
(emphasis added)

There are two important provisions of this section of the statute that should be noted. First, the section explicitly requires the Commission to determine that the imposition and collection of the utility tariff charge that will result from the securitization of these costs will be just and reasonable and in the public interest. Second, in making its determination as to whether the securitization of these costs is just and reasonable and in the public interest, the Commission is directed to compare the results of the securitization to the results of a recovery of those costs using traditional (non-securitization) methods.

O. Evergy West asserts that it has a general right to recover all prudently incurred costs. The Missouri Supreme Court has found otherwise. In a 2021 case, *Spire*

Missouri, Inc. v. Public Service Commission,⁵⁴ Spire Missouri challenged the Commission's decision to disallow a portion of the company's prudently incurred cost of pursuing its general rate case. In upholding the Commission's decision, the Supreme Court said:

In terms of their reasonableness, these expenditures were entitled to a presumption of prudence, and the **prudence** of the expenditures was never called into question. Nonetheless, the PSC concluded that including all of these expenditures in setting Spire's future rates was not **just** because some of the expenses were not fair to ratepayers in that they were incurred to benefit (if anyone) Spire's shareholders. Implicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so. In setting rates the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable,' subject, of course, to judicial review that the PSC's conclusions are supported by competent and substantial evidence and not arbitrary, capricious, or an abuse of discretion. (Internal citations omitted. Emphasis in original.)

P. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs." That section also allows the Commission to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities." The 95/5 sharing provision in Evergy West's FAC tariff is designed to provide such an incentive.

Q. In its Report and Order that initially established Evergy West's FAC, the Commission found that "after-the-fact prudence reviews alone are insufficient to assure Aquila [now Evergy West] will continue to take reasonable steps to keep its fuel and

⁵⁴ 618 S.W.3d 225 (Mo. banc 2021).

purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100 percent pass through of those costs.” and “allowing Aquila to pass 95 percent of its prudently incurred fuel and purchased power costs, above those included in its base rates, through its FAC is appropriate. With a 95 percent pass-through, the Commission finds Aquila [now Evergy West] will be protected from extreme fluctuations in fuel and purchased power cost, yet retain a significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment.”⁵⁵

Decision

Customarily, Evergy West would recover fuel and purchased power costs in excess of those reflected in its base rates through its FAC contained in its tariff, which is where the costs Evergy West seeks to securitize were removed from. Due to the extraordinary nature of the costs for fuel and purchased power attributable to Winter Storm Uri,⁵⁶ the Commission permitted Evergy West to remove those costs from its FAC pursuant to Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI). If those costs were to pass through Evergy West’s FAC they would be subject to the 95/5 sharing provision. Under that provision Evergy West would be entitled to recover 95 percent of costs for its fuel and purchased power.

Prior to seeking recovery of these costs through securitization, Evergy West sought recovery through an AAO, which would allow Evergy West to defer those costs

⁵⁵ File No. ER-2007-0004, Report and Order, Pages 53-54, issued May 17, 2007.

⁵⁶ The prudence of Evergy West’s decisions relating to Winter Storm Uri are not relevant for this issue, but will be addressed in subsequent issues.

for consideration in a later rate case. An AAO is not the customary method through which fuel and purchased power costs are recovered, but using an AAO to defer costs to a future rate case is another method of cost recovery. Under an AAO the Commission would determine what costs Eversource West would be permitted to defer, and later the Commission would have to determine what amount of costs deferred, if any, Eversource West could recover through rates. Staff has stated that for recovery through an AAO it would also recommend that Eversource West recover only 95 percent of the fuel and purchased power costs for Winter Storm Uri.

In the rate case in which Eversource West's FAC was established, the Commission found that the sharing mechanism was necessary to ensure that Eversource West had sufficient financial incentive and motivation to operate at maximum efficiency. The same financial incentives and motivations apply in the situation facing Eversource West during Winter Storm Uri. Eversource West has presented no compelling reason why it should be entitled to a higher percentage than it would receive under conventional recovery of these costs. Eversource West's primary assertion is that recovery under the Securitization Law does not require a 95/5 sharing mechanism. However, recovery through securitization requires a comparison to recovery absent securitization, which would be through Eversource West's FAC or an AAO. Under the FAC only 95 percent of fuel and purchased power costs would be recoverable, not 100 percent. If an AAO had been utilized instead of the FAC, there would be no guarantee as to the amount that Eversource West would recover or what additional offsets, such as extraordinary revenues, could occur.

Recovery through securitization requires that the costs incurred be qualified extraordinary costs and that those costs are "of an extraordinary nature which would

cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking.” Recovery through securitization mitigates those impacts, which is beneficial to Evergy West’s customers, but Evergy West receives its recovery of those costs much quicker than it would through customary recovery methods. Evergy Wests seeks to add the additional incentive of recovering an additional five percent beyond what it would normally be entitled to recover.

The Commission finds that allowing Evergy West to use securitization to recover an additional five percent of its fuel and purchased power costs related to Winter Storm Uri, which it would not be permitted to recover under traditional methods of ratemaking, is not just and reasonable, nor is it in the public interest. The Commission also finds that the appropriate method of customary ratemaking absent securitization would be through Evergy West’s FAC.

E) What is the appropriate adjustment related to non-fuel operations and maintenance (NFOM) costs?

Findings of Fact

39. As part of the costs attributable to Winter Storm Uri to be recovered through securitization, Evergy West sought to recover NFOM costs.⁵⁷ Evergy West’s securitization petition included NFOM expenses attributed to Winter Storm Uri estimated at \$274,934.⁵⁸

⁵⁷ Bolin Rebuttal, Ex. 100, Page 7, Lines 13-16.

⁵⁸ File No. EF-2022-0155, Petition for Financing Order Authorizing the Issuance of Securitized Utility Tariff Bonds to Finance Qualified Extraordinary Costs Caused by Winter Storm Uri in February 2021, Page 13.

40. Eversource West incurred NFOM expenses related to Winter Storm Uri for communications, overtime for its employees and payroll taxes on the overtime costs, additional contractor costs, damage claims, and costs for additional materials.⁵⁹

41. Staff did not include Eversource West's NFOM costs for recovery through securitization. Staff has included these costs in Staff's cost of service in Eversource West's currently pending rate case, File No. ER-2022-0130.⁶⁰

42. Eversource West has agreed to remove its request for NFOM costs from the amount to be recovered through securitization and will include them in the revenue requirement in its general rate case.⁶¹

Conclusions of Law

R. Section 393.1700.1(13) states that qualified extraordinary costs are "not limited to those [costs] related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events."

Decision

Securitization requires that the Commission identify the amount of qualified extraordinary costs, and that recovery of those costs is just and reasonable and in the public interest. NFOM costs that Eversource West sought to recover in its petition are costs that were incurred due to Winter Storm Uri. Staff argues that it has included these costs in Eversource West's currently pending general rate case. Eversource West has changed its position from its petition and now agrees that those costs should be addressed within its pending rate case. The Commission finds that because these costs are being recovered

⁵⁹ Klote Direct, Ex. 11, Page 10, Lines 15-21, and Schedule RAK-1.

⁶⁰ Bolin Rebuttal, Ex. 100, Page 7, Lines 13-20.

⁶¹ Klote Surrebuttal, Ex. 12, page 6, Lines 2-6.

through Eversource West's rate case, additional recovery through securitization is not just and reasonable or in the public interest.

F) Should Eversource West's recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by Eversource West during Winter Storm Uri?

Findings of Fact

43. During Winter Storm Uri, Eversource West sold more electricity than it would have sold during a normal February. Staff determined the amount of baseline retail revenues that exceeded Eversource West's three-year average for February 2021 to be \$8,612,108 in "excess" revenue. Staff proposes to use this amount of "excess" revenue to partially offset the "qualified extraordinary costs" incurred by Eversource West.⁶²

44. Eversource West's \$8.6 million in revenues attributable to Winter Storm Uri are approximately 1.1 percent of its normal annual base retail revenues. In contrast, the fuel and purchased power incurred in two weeks from Winter Storm Uri are about one year's worth of fuel and purchased power.⁶³

45. Eversource West's earnings for 2021 overall resulted in a return on equity (ROE) well below the ROE assumed from its last rate case. Consequently, in 2021 Eversource West did not recover its costs to provide service and a sufficient return on capital to investors. There were no excess revenues in 2021.⁶⁴

⁶² Lange Rebuttal, Ex. 108, Page 33, Lines 11-16. See also, McMellen Rebuttal, Ex. 100, Page 5, Lines 12-17.

⁶³ Ives Surrebuttal, Ex. 9, Page 5, lines 4-8.

⁶⁴ Ives Surrebuttal, Ex. 6, Pages 5-6, Lines 20, 2.

Conclusions of Law

S. Section 393.1700.1(13) RSMo, allows for the recovery of costs through securitization that are prudently incurred during an anomalous weather event, and of an extraordinary nature.

Decision

Staff seeks to reduce the securitized amount by offsetting approximately \$8.6 million in revenues attributable to Winter Storm Uri that Eversource West received in excess of its average February revenues. Staff proposes that allowing Eversource West to retain these revenues is not just and reasonable and in the public interest. The Securitization Law defines what is included as a qualified extraordinary cost and that definition does not include any offset of those costs for revenues.

This argument is similar to Eversource West's argument that it should receive 100 percent of fuel and purchased power costs attributable to Winter Storm Uri, instead of the 95 percent it would have received through customary treatment of those costs. Staff's argument to reduce the qualified extraordinary cost amount by offsetting that amount against "excess" revenue Eversource West earned as a result of Winter Storm Uri is rejected for the same reason the Commission rejected Eversource West's argument for 100 percent recovery of costs.

Under traditional ratemaking there is no revenue adjustment for the effect of past weather, and no adjustment is made to reduce rates to retroactively recover "excess" revenue. Likewise, Eversource West could not increase rates to make up for a shortfall from events such as an unseasonably cool summer. Those fluctuations are addressed over

time in the ratemaking process by normalizing the effect of those weather fluctuations in the company's rates.

Section 393.1700.1(13) RSMo, allows for the recovery of prudently incurred costs. Staff makes no assertion that Evergy West's fuel and purchased power costs were imprudent but seeks to offset those costs based upon Evergy West having higher than normal baseline revenues for February 2021. The revenues collected from customers through rates include the entire revenue requirement, all cost-of-service expenses and a return on rate base. Considering that Evergy West failed to meet its assumed rate of return for 2021, there is no showing by Staff that the higher than normal revenues from February 2021 were in fact "excess" revenue. Staff's request to recover revenue is both not authorized by the Securitization Law, and is also not based in traditional ratemaking. The Commission does not find Staff's proposal to be just and reasonable, and will not order a reduction or offset of qualified extraordinary costs for higher than normal revenues.

G) Should Evergy West's recovery through securitized bonds reflect a disallowance based on Evergy West's resource planning?

H) Were the costs incurred by Evergy West related to Winter Storm Uri as a result of its resource planning process just and reasonable?

- a. If no, should Evergy West's recovery through securitized bonds reflect a disallowance?**
- b. If yes, what amount should the Commission disallow?**

The Commission will address these sub-issues together.

Findings of Fact

46. Public Counsel asserts that Evergy West's resource planning is imprudent because it does not have enough generation resources to meet the energy requirements

of its customers, and the company is relying on the energy from other utilities in the SPP to meet its customers' needs.⁶⁵ Public Counsel alleges that Eversource West's retirement of its Sibley power plant and subsequent procurement of capacity from Eversource Missouri Metro (Eversource Metro) was imprudent.⁶⁶

47. Prior to Winter Storm Uri, customers did not see an increased cost due to the implementation of Eversource West's alleged imprudent resource planning decisions.⁶⁷

48. Capacity is the maximum output an electricity generator can physically produce, measured in megawatts. Energy is the amount of electricity a generator produces over a defined period of time.⁶⁸

49. Having enough capacity is essential to having enough energy to meet customers' load requirements. However, having enough capacity does not necessarily ensure that energy will be available when it is needed. For instance, Eversource West does not have enough generation capacity through its owned resources and entered into purchased power agreements to meet the SPP resource adequacy standards. It can only meet the SPP resource adequacy standards when combined with Eversource Metro.⁶⁹

50. Eversource West sells all of the energy it generates into the SPP Integrated Marketplace and purchases all the energy necessary to serve its native load customers from the SPP.⁷⁰

⁶⁵ Mantle Rebuttal, Ex. 201, Page 9, Lines 3-6.

⁶⁶ Messamore Surrebuttal, Ex. 17, Page 9, Lines 11-15.

⁶⁷ Mantle Rebuttal, Ex. 201, Page 9, Lines 6-8.

⁶⁸ Mantle Rebuttal, Ex. 201, Page 11, Lines 22-24.

⁶⁹ Mantle Rebuttal, Ex. 201, Page 12, Lines 1-8.

⁷⁰ Bridson Direct, Ex. 1, Page 6, Lines 7-10.

51. Evergy Metro and Evergy West report capacity to SPP as a combined entity.⁷¹

52. Evergy West has sufficient capacity to meet its SPP resource adequacy requirements and reserve margin as a standalone entity, though some of Evergy West's capacity comes from a contract with Evergy Metro.⁷²

53. Utilities that are members of a RTO commonly rely on market purchases as one source of generation in their portfolio.⁷³

54. Evergy West completes and files an Integrated Resource Plan (IRP) every three years, with annual updates in intervening years, as outlined in the IRP rules in 20 CSR 4240-22.⁷⁴

55. It is not possible for an electric utility to accurately plan for all extreme circumstances.⁷⁵

56. Evergy West identified Sibley Unit 3 (Sibley), a coal fired plant, for retirement in its 2017 IRP annual update. Evergy West modeled Sibley's retirement plan and a purchased power agreement over 18 scenarios, and in every scenario Sibley's retirement was more economic than its continued operation.⁷⁶

57. Evergy West's decision to retire the Sibley plant was consistent with a local and nationwide trend. At the time Evergy West decided to retire Sibley, there was a drop in coal-fired generation, and that drop is expected to continue.⁷⁷

⁷¹ Messamore Surrebuttal, Ex. 17, Page 8, Lines 4-8.

⁷² Messamore Surrebuttal, Ex. 17, Page 8, Lines 11-13.

⁷³ Reed Surrebuttal, Ex. 18, Page 18, Lines 13-14.

⁷⁴ Messamore Surebuttal, Ex. 17, Page 4, Lines 13-14.

⁷⁵ Mantle Rebuttal, Ex. 201, Page 10, Line 25.

⁷⁶ Messamore Surrebuttal, Ex. 17, Page 10, Lines 11-13.

⁷⁷ Kennedy Surrebuttal, Page 8, Line 8-11.

Conclusions of Law

T. The Commission's electric utility resource planning rule, 20 CSR 4240-22.010(2) states in part:

The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. ...

U. Section 393.1700.1(13), RSMo, requires that qualified extraordinary costs be prudently incurred.

V. The Commission's standard for assessing whether conduct was prudent considers whether the conduct was prudent at the time the utility had to solve a problem. The Commission's prudence standard does not rely on hindsight.⁷⁸

Decision

Public Counsel has alleged that Evergy West was imprudent in its resource planning, and that because of its imprudent resource planning, the amount of qualified extraordinary costs should be reduced. The Securitization Law allows for recovery of qualified extraordinary "costs incurred prudently before, on, or after August 28, 2021." Public Counsel asks the Commission to reduce the amount of qualified extraordinary costs for Winter Storm Uri based upon the prudence of decisions made years prior to Winter Storm Uri. Public Counsel proposes that, but for Evergy West's resource planning decisions, Winter Storm Uri costs would have been mitigated. However, Public Counsel did not demonstrate that at the time those decisions were made the costs from Winter Storm Uri were foreseeable. Public Counsel asks the Commission to examine whether

⁷⁸ File No. EO-85-17, In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues, page 13.

Evergy West's decision to retire Sibley without replacing it was prudent and whether Evergy West's resource planning, more specifically its reliance on Evergy Metro to meet its SPP capacity requirement, was prudent. Public Counsel offers its own previous concerns about Evergy West's resource planning as its primary evidence of imprudence.

Public Counsel made the same argument in File No. EO-2022-0040, involving Liberty, who is also a member of SPP. In that case Liberty sought to securitize costs incurred from Winter Storm Uri. The Commission in its Amended Report and Order addressed Public Counsels argument, in part, as follows:

No doubt, if Liberty had more capacity available to sell into the SPP market during Winter Storm Uri, it could have earned enough from those sales to offset the fuel costs that it now seeks to securitize. But that fact is entirely based on perfect hindsight. Liberty planned to have sufficient capacity to meet all requirements established by SPP. Other than showing a bad result, Public Counsel has not demonstrated any imprudence in Liberty's planning process.⁷⁹

The Commission's analysis in Liberty's securitization case is equally applicable here. Public Counsel's witness correctly states that there is no way to accurately plan for all extreme circumstances. If Sibley had not been retired, or had been replaced with alternative generation, it might have mitigated some of the costs from Winter Storm Uri, but customers would not have received any economic benefits from retiring Sibley. Additionally, there is no accurate way to quantify the amount of Winter Storm Uri costs would have been mitigated. That Evergy West chose to reduce foreseeable costs by

⁷⁹ File No. EO-2022-0040, Amended Report and Order, at page 33, issued September 22, 2022.

retiring Sibley as opposed to the unforeseeable costs resulting from Winter Storm Uri is further support for its decision being prudent.

Evergy West provided sufficient evidence to determine that its resource planning, including its decision to retire Sibley, was reasonable at the time those decisions were made. Evergy West's resource planning resulted in it meeting its SPP resource adequacy requirements. Evergy West presented evidence that it considered multiple scenarios when deciding whether to retire its Sibley Generator, and from the results of that analysis determined that it was economically beneficial to ratepayers to do so. The Commission disagrees with Public Counsel's assessment that Evergy West's resource planning was imprudent. The Commission will not reduce the qualified extraordinary cost amount based upon Evergy West's resource planning.

I) Should Evergy West's recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

J) Should Evergy West's recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs?

The Commission will address these sub-issues together.

Findings of Fact

58. Evergy West is a member of a consolidated tax group, Evergy Inc.⁸⁰

59. Evergy West was permitted a tax deduction when the Winter Storm Uri costs were incurred.⁸¹

⁸⁰ Riley Surrebuttal, Ex. 206, Page 3, footnote 3.

⁸¹ Hardesty Surrebuttal, Page 3, Lines 4-5.

60. Evergy West did not take a tax deduction for Winter Storm Uri costs for book purposes and this created a timing difference. The deferred taxes were recorded on Evergy West's books as a liability.⁸²

61. The SUTC will be listed as a separate line item on customers' bills.⁸³

62. The deferred tax liability recorded by Evergy West allows for the tax benefits associated with Storm Uri to be given to customers in future general rate cases over the life of the securitized bond.⁸⁴

63. The revenue collected from customers to repay the bonds will be taxable and the SPE will have to pay tax on those revenues. The SPE will not be entitled to a tax deduction for the Winter Storm Uri costs since they were already deducted by Evergy West.⁸⁵ The SPE will file a tax return as part of the consolidated income tax return filed by Evergy Inc.⁸⁶

64. Public Counsel asserts that Evergy West expects to claim a one-time tax deduction of approximately \$72.2 million on its 2021 consolidated income tax return for fuel and purchased power costs incurred during Winter Storm Uri,⁸⁷ and that without a reduction in the proposed securitization amount to recognize this tax reduction, only Evergy West will benefit.

65. Public Counsel contends that ratepayers will pay for Evergy West's tax write-off of \$72.2 million, which will cost them \$135 million over the 15-year term of

⁸² Transcript, Page 229, Lines 4-21.

⁸³ Riley Rebuttal, Ex. 205, Page 7, Lines 1-2.

⁸⁴ Bolin Surrebuttal, Ex. 101, Page 4, Lines 15-18.

⁸⁵ Hardesty Surrebuttal, Page 3, Lines 5-8.

⁸⁶ Bolin Surrebuttal, Ex. 101, Page 4, Lines 20-21.

⁸⁷ Riley Surrebuttal, Ex. 206, Page 3, Lines 9-11.

securitization.⁸⁸ Public Counsel argues this tax benefit should be recognized as a reduction in the securitization amount.⁸⁹

66. Public Counsel states that when securitization is implemented, taxes will be applied to the line item that ratepayers will see on their monthly bill, the revenues from which are for the securitization bond repayment, and these taxes will be the responsibility of the ratepayer and not the Company.⁹⁰ This is incorrect. Income taxes applicable to revenues collected from customers were not included in the calculation of the securitization amount by Staff or Evergy.⁹¹

67. In a rate case, the amount of taxes associated with the revenue the company collects is included in the base rates. There is no separate line item on a customer's bill for federal or state income taxes, which the company will have to pay.⁹²

68. Public Counsel, when comparing the income taxes collected as part of an FAC to income taxes collected with securitization,⁹³ neglected to include the taxation of the revenues at the SPE. Once you include the taxes on the SPE, there is no difference between recovering the Winter Storm Uri costs through the FAC or through the securitization financing. There is no difference in the tax amount and no benefit to Evergy West.⁹⁴

69. Public Counsel contends that taxes on the carrying costs will be spread over Evergy West's 2021 and 2022 income tax returns.⁹⁵

⁸⁸ Riley Surrebuttal, Ex. 206, Pages 3-4, Lines 22, 1.

⁸⁹ Riley Surrebuttal, Ex. 206, Page 3, Lines 11-12.

⁹⁰ Riley Rebuttal, Ex. 205, Page 5, Lines 15-18.

⁹¹ Bolin Surrebuttal, Ex. 101, Page 3, Lines 13-17.

⁹² Bolin Surrebuttal, Ex. 101, Page 3, Lines 16-19.

⁹³ Riley Rebuttal, Ex. 205, Page 4, Lines 11-12.

⁹⁴ Hardesty Surrebuttal, Ex. 5, Pages 3-4, Lines 9, 1.

⁹⁵ Riley Surrebuttal, Ex. 206, Page 4, Lines 8-9.

70. The SUTC will be excluded from Evergy West's revenues in a general rate case for calculating the cost of service.⁹⁶

71. Evergy West is not taxed when the securitization bonds are issued.⁹⁷ Internal Revenue Service (IRS) Revenue Procedure 2005-62 at .03 states that Evergy West does not have to recognize the income upon the issuance of the bonds or the receipt of the cash but does have to recognize the income as the nonbypassable charges are incurred or put on the customers' bills.⁹⁸

72. IRS Revenue Procedure 2005-62 provides a safe harbor for public utility companies that, pursuant to specified cost recovery legislation, receive an irrevocable financing order permitting the utility to recover certain specified costs through a qualifying securitization. Under this revenue procedure, Evergy West will not recognize taxable income upon the receipt of the financing order, the transfer of Evergy West's rights under the Financing Order to the SPE, or the receipt of cash in exchange for the issuance of the Securitization Bonds. Evergy West will treat the SUTC as gross income to Evergy West.⁹⁹

73. Any tax benefits associated with the Winter Storm Uri costs will be given to customers in future general rate cases over the life of the securitized bond. To include those benefits directly in the SUTC would double-count those benefits.¹⁰⁰

74. The deferred taxes will be included in rate base until all the Winter Storm Uri costs are collected through the securitization financing.¹⁰¹ The revenues collected

⁹⁶ Bolin Surrebuttal, Ex. 101, Page 4, Lines 2-3.

⁹⁷ Hardesty Surrebuttal, Page 3, Lines 3-4.

⁹⁸ Transcript, Page 238, Lines 14-18.

⁹⁹ Humphrey Direct, Ex. 6, Pages 15-16, Lines 16-23, 1-2.

¹⁰⁰ Bolin Surrebuttal, Ex. 101, Page 4, Lines 15-18

¹⁰¹ Hardesty Surrebuttal, Ex. 5, Page 4, Lines 7-11.

from Evergy West customers through the nonbypassable charge will be taxed to Evergy Inc. in its consolidated tax returns. Evergy Inc. is the parent company of Evergy West.¹⁰²

Conclusions of Law

W. IRS Revenue Procedure 2005-62 states in part:

SECTION 6. APPLICATION

.01 The utility will be treated as not recognizing gross income upon

(1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;

(2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or

(3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.

.02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.

.03 The nonbypassable charges are gross income to the utility recognized under the utility's usual method of accounting.

X. Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Evergy West to account for any potential tax benefits that may lower its actual securitized utility tariff costs associated with Winter Storm Uri through a future rate case.

¹⁰² Transcript, Pages 335-336.

Decision

Public Counsel asks the Commission to reduce the securitized amount for tax deductions it says Evergy West will get for Winter Storm Uri costs, and also for a tax deduction on the carrying costs for Winter Storm Uri. Pursuant to IRS Revenue Procedure 2005-62, Evergy West does not have to recognize money received from the SPE pursuant to the financing order and the transfer of the deferred tax liability for costs expended due to Winter Storm Uri for income tax purposes. However, that does not mean that the revenues collected that typically offset the tax deduction related to fuel and purchased power costs (Winter Storm Uri costs) will not be recognized in future Evergy West rate cases. All revenues collected from Evergy West customers as part of the SUTC will be taxed in the tax periods received or recognized. Those amounts will be accounted for in Evergy Inc.'s consolidated tax returns. The deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West's rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.

Additionally, the Securitization Law, at Section 393.1700.2(3)(c)k, RSMo., requires that this Financing Order provide for a reconciliation process to account for any potential tax benefits in a future rate case. Therefore, there is no need to disallow an uncertain tax amount now, when more information regarding what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case. Accordingly, the Commission will not reduce the securitized amount for tax deductions related to Winter Storm Uri costs, or carrying costs.

K) What are the appropriate carrying costs for Winter Storm Uri?**Findings of Fact**

75. Evergy West incurred Winter Storm Uri costs in February, 2021, but has not yet recovered those costs from its customers. The Securitization Law allows Evergy West to securitize and recover carrying costs. Evergy West seeks carrying costs on the entire amount of qualified extraordinary costs through the proposed issuance date of the securitization bonds of January 2023.¹⁰³ Evergy West contends those carrying costs should be calculated using Evergy West's assumed WACC of 7.358 percent, plus taxes.¹⁰⁴ The WACC plus applicable taxes Evergy West used in this proceeding is 8.9 percent.¹⁰⁵ Evergy West assumes this WACC from the stipulation and agreement in Evergy West's last general rate case, File No. ER-2018-0146, but that stipulation was silent as to specific components that determine the WACC.¹⁰⁶

76. Evergy West has been carrying Winter Storm Uri costs using short-term debt.¹⁰⁷

77. Public Counsel proposes using Evergy West's average cost of short-term debt for carrying costs, compounded monthly.¹⁰⁸

78. Short-term debt balances fluctuate and are heavily influenced by factors including operations, working capital needs, market conditions and special circumstances

¹⁰³ Klote Direct, Ex. 11, Page 7, Lines 15-16.

¹⁰⁴ Klote Direct, Ex. 11, Page 10, Lines 4-5.

¹⁰⁵ Klote Direct, Ex. 11, Page 14, Lines 7-9.

¹⁰⁶ Murray Rebuttal, Ex. 203, Page 3, Lines 6-16.

¹⁰⁷ Transcript, Page 495, Lines 13-19

¹⁰⁸ Murray Rebuttal, Ex. 203, Page 2, Lines 6-8.

like Winter Storm Uri. Short-term debt is used as bridge financing by Evergy West until it can close on long-term debt financing.¹⁰⁹

79. Staff agrees that Evergy West should be allowed to recover carrying costs for Winter Storm Uri, but contends those carrying costs should be calculated using Evergy West's long-term debt rate of 5.06 percent from File No. ER-2018-0146.¹¹⁰

80. In Evergy West's current rate case, File No. ER-2022-0130, Evergy West estimated its embedded cost of long-term debt at 3.787 percent, as of May 31, 2022.¹¹¹ However, as of the issuance of this financing order, the Commission has not issued its report and order in that rate case.

81. Applying Evergy West's long-term debt rate shares the cost of extraordinary events between ratepayers and shareholders. Whereas applying Evergy's WACC insulates Evergy West from risk from an unanticipated event like Winter Storm Uri, and places more risk on ratepayers.¹¹²

82. Public Counsel contends that carrying costs should not be recovered at Evergy West's long-term cost of debt because Evergy West anticipates carrying Winter Storm Uri extraordinary costs for less than two years.¹¹³ Public Counsel also asserts that Evergy West's long term debt rate is inappropriate because it is premised on Evergy West's cost of long-term debt from June 30, 2018.¹¹⁴

¹⁰⁹ Reed Surrebuttal, Ex. 18, Page 28-29, Lines 19-23, 1-5.

¹¹⁰ Bolin Rebuttal, Ex. 100, Page 4, Lines 3-6.

¹¹¹ Murray Surrebuttal, Ex. 204, Page 3, Lines 16-18.

¹¹² Bolin Rebuttal, Ex. 100, Page 7, Lines 8-11.

¹¹³ Murray Rebuttal, Ex. 203, Page 5, Lines 6-14.

¹¹⁴ Murray Surrebuttal, Ex. 204, Page 2, Lines 18-19.

83. For accounting purposes, an obligation longer than 364 days is typically considered long-term.¹¹⁵ Using Evergy West's long-term debt rate to determine carrying costs is more appropriate than using Evergy West's short-term debt rate, because more than a year has elapsed since Winter Storm Uri.¹¹⁶ Evergy West has been carrying the Winter Storm Uri costs on its books since February 2021.

84. Evergy West's Commission-approved long-term debt rate is more appropriate to use than the WACC because this securitization addresses fuel and purchased power costs, not capital costs normally included in rate base, such as plant.¹¹⁷

85. The amount of carrying costs calculated by Staff's financial expert, Mark Davis, using Evergy West's long-term debt rate of 5.06 percent multiplies what it describes as the amount of normal deferral by the interim carrying cost divided by 12 for each month since February 2021.¹¹⁸

Conclusions of Law

Y. Section 393.1700.1(13), which defines "qualified extraordinary costs" for purposes of the securitization statute, specifically states that such costs include carrying charges. The statute does not further define carrying charges, nor clarify how they are to be calculated.

¹¹⁵ Murray Rebuttal, Ex. 203, Page 9, Lines 3-5.

¹¹⁶ Bolin Rebuttal, Ex. 100, Page 11, Lines 3-5.

¹¹⁷ Bolin Rebuttal, Ex. 100, Page 7, Lines 6-8. Staff is discussing what its recommended carrying cost recovery rate would be for an AAO, but the same reasoning applies to securitization.

¹¹⁸ Davis Confidential Workpapers, Ex. 107C, Ducera 15 Yr Sec and Ducera 20 Yr Sec tabs.

Decision

The Commission believes that Staff's proposal and method to calculate carrying costs for Winter Storm Uri related costs at Eversource West's long-term debt rate of 5.06 percent is most appropriate because the costs to be securitized are not capital costs. Further, the use of the long-term debt rate shares the risks of extraordinary events between Eversource West and its ratepayers. Public Counsel's proposal to use short-term debt rates for the purposes of calculating carrying costs is inappropriate as the term to which the short-term debt rate, compounded monthly, would be applied is a period greater than 364 days and closer to two years.

L) What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding Eversource West's administration of the Special Incremental Load (SIL) tariff?

Findings of Fact

86. Staff proposes disallowing \$1,231,553,¹¹⁹ prior to applying any jurisdictional allocation, from the securitization amount related to the implementation of the SIL tariff.

87. The Commission approved Eversource West's SIL tariff in File No. EO-2019-0244.¹²⁰ The purpose of the SIL tariff is to provide customers who smelt aluminum and primary metals, produce or fabricate steel, or operate a facility in excess of a monthly demand of 50 megawatts, with a rate not based on Eversource West's cost of service, but that is designed to recover no less than the incremental costs of serving the new load.¹²¹

¹¹⁹ Transcript, Page 303, Line 3, corrected amount.

¹²⁰ Luebbert Rebuttal, Ex. 105, Page 2, Footnote 1.

¹²¹ Luebbert Rebuttal, Ex. 105, Pages 5-6, Lines 21-23, 1-8.

88. Nucor is engaged in the manufacture of steel and steel products. It constructed a “micro mill” in Sedalia, Missouri, which utilizes an electric arc furnace to recycle scrap steel into steel rebar.¹²²

89. Nucor receives electric service from Eversource West through the SIL Rate Contract and Schedule SIL-1, which contains rates specific to Nucor’s service.¹²³

90. As part of the *Non-Unanimous Stipulation and Agreement* in File No. EO-2019-0244, (Nucor Stipulation) Eversource West agreed to identify and isolate costs attributable to providing service to Nucor. Eversource West also agreed to modify its FAC accounting to ensure Nucor related costs are not included in the FAC customer charge.¹²⁴ Eversource West did not identify Customer Event Balancing events, quantify the cost impacts of the events, or remove those costs from its securitization request.¹²⁵

91. Eversource West did not determine or estimate the next-day Nucor hourly load from which cost impacts on non-Nucor ratepayers could be determined. As a result of not quantifying those events additional costs were included in Eversource West’s securitization request, which it agreed to remove prior to non-Nucor ratepayer recovery.¹²⁶

92. Staff contends that Eversource West’s imprudent implementation of the Schedule SIL tariff in combination with the Nucor Stipulation resulted in additional costs to non-Nucor ratepayers through Eversource West’s FAC that were subsequently included in Eversource West’s securitization request.

¹²² Luebbert Rebuttal, Ex. 105, Page 5, Lines 14-18.

¹²³ Luebbert Rebuttal, Ex. 105, Page 5, Lines 20-21.

¹²⁴ Luebbert Rebuttal, Ex. 105, Schedule JL-r2, *Non-Unanimous Stipulation and Agreement*, EO-2019-0244, Pages 3-4.

¹²⁵ Luebbert Rebuttal, Ex. 105, Page 4, Lines 3-7.

¹²⁶ Luebbert Rebuttal, Ex. 105, Page 4, Lines 7-12.

93. Staff raised the concerns related to treatment of the incremental costs to serve Nucor on May 12, 2022 in a Staff filed complaint in File No. EC-2022-0315.¹²⁷

94. An exact quantification of an amount necessary to insulate non-Nucor ratepayers is problematic, because Evergy West has not retained the data necessary to determine the hours in which payments were due.¹²⁸

95. Pursuant to the Nucor Stipulation, Evergy West agreed to hold non-Nucor customers harmless from any deficit in revenues caused by customers served under the SIL tariff.¹²⁹

96. Evergy West contends that no costs have been purposely or inadvertently passed to other customers.¹³⁰

97. Nucor has a highly variable load factor and its variations can undermine advance load planning, including hour to hour planning.¹³¹ Staff used a range of static value to represent the Nucor load, which is not based on Nucor operations.¹³²

98. Evergy West's day-ahead commitments included provisions for Nucor based on Nucor's previous years load. A portion of Evergy West's load forecast includes the Nucor load, and Evergy West can conservatively estimate that Nucor's load from 365 days prior to the operating day is included in the Evergy West load forecast, adjusted for Nucor starting operations in March 2020.¹³³

¹²⁷ Luebbert Rebuttal, Ex. 105, Page 14, Lines 12-15

¹²⁸ Luebbert Rebuttal, Ex. 105, Page 3, Lines 13-16.

¹²⁹ Luebbert Rebuttal, Ex. 105, Page 6, Lines 12-13.

¹³⁰ Lutz Surrebuttal, Ex. 16, Page 16, Lines 1-3.

¹³¹ Lutz Surrebuttal, Ex. 16, Page 12, Lines 1-15.

¹³² Carlson Surrebuttal, Ex. 2, Page 3, Lines 12-17.

¹³³ Carlson Surrebuttal, Ex. 2, Page 5, Lines 1-12.

99. At the time of development of the SIL tariff and the stipulation, Evergy West was unaware of the difficulty in obtaining Nucor load projections appropriate for daily forecasting.¹³⁴

100. Evergy West's analysis concludes that Nucor's load did not negatively impact non-Nucor ratepayers. It was more beneficial to purchase all of Nucor's load in the real time market, as opposed to the day ahead market in February 2021.¹³⁵

Conclusions of Law

Z. Section 393.1700.1 (19), RSMo, defines a special contract as an electrical service provided under the terms of a special incremental load rate schedule at a fixed price rate approved by the commission.

AA. Section 393.1700.1 (16), RSMo, excludes from the definition of SUTC customers receiving electrical service under special contracts as of August 28, 2021, who are not subject to the securitized utility tariff charge.

Decision

Staff asks the Commission to reduce the qualified extraordinary costs by approximately \$1.2 million for Evergy West's imprudent implementation of the SIL tariff.

Evergy West asserts that an adjustment to the amount of qualified extraordinary cost for Winter Storm Uri is not warranted because the revenue received from Nucor under the SIL tariff is sufficient to cover its cost of service, and because it was served in the real-time SPP market during Winter Storm Uri. Evergy West also states that Staff's method of calculating the Nucor impact is flawed. Evergy West also asserts that it has already agreed to keep certain records, identify costs, and other items as part of the

¹³⁴ Lutz Surrebuttal, Ex. 16, Pages 12-13, Lines 4-15, 1-8.

¹³⁵ Carlson Surrebuttal, Ex. 2, Page 6, Lines 8-16.

August 30, 2022, Stipulation and Agreement in File No. ER-2022-0130, which occurred after the evidentiary hearing in this case. Thus, Evergy West argues, there is no support for the Commission to require those conditions in this case.

Staff argues that Evergy West failed to determine or estimate the next day Nucor hourly load for comparison to actual Nucor load to determine ratepayer impacts. Yet, Staff states that there are difficulties in quantifying the impact to non-Nucor customer of serving Nucor's load in February 2021, largely due to a lack of data retention by Evergy West. Staff has filed a complaint against Evergy West in File No. EC-2022-0315 for the purpose of addressing any potential violations of the Nucor Stipulation.

Nucor is currently the only customer of its kind that Evergy West serves under the SIL tariff. It appears that Evergy West may have underestimated what would be involved with tracking the Nucor load. At this time there is insufficient evidence for the Commission to determine that non-Nucor customers were harmed. There is also insufficient evidence to quantify any potential harm.

Pursuant to the Nucor Stipulation, Evergy West has agreed to hold non-Nucor customers harmless from any deficit in revenues caused by serving the Nucor load. The Commission is unable to determine at this time whether Evergy West's implementation of the SIL tariff was imprudent, and this is not the proper proceeding to determine if Evergy West has violated the Nucor Stipulation. It is appropriate that any determination regarding the Nucor Stipulation be addressed in the complaint proceeding. The hold harmless provision of the Nucor Stipulation will prevent ratepayers from being harmed from any Winter Storm Uri costs from service to Nucor being improperly applied to non-Nucor

customers. Therefore, the Commission will not reduce the qualified extraordinary cost amount for Evergy West's administration of the SIL tariff.

M) What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Findings of Fact

101. The Securitization Law requires an analysis of the net present value (NPV) of benefits to customers with and without securitization.¹³⁶ The Securitization Law does not define NPV.¹³⁷

102. The discount rate for a NPV analysis is the rate used to discount estimated future cash flows to the present. The determination of a reasonable discount rate is defined by the risk of the cash flows, the interval of the cash flows, and the term of the cash flows. The appropriate discount rate should be commensurate with the risk and term of the investment.¹³⁸

103. Evergy West analyzed the NPV benefit to customers by comparing securitization to the recovery methods of Evergy West's FAC and deferral under Section 393.1400, RSMo, plant-in-service accounting, and deferral to a regulatory asset through an AAO.¹³⁹

104. Evergy West used its WACC of 8.9 percent for the discount rate in determining the NPV benefit to customers for securitization when compared to customary ratemaking.¹⁴⁰ Evergy West contends that this is the correct rate because it committed

¹³⁶ Section 393.1700.2(3)(c)b RSMo.

¹³⁷ Murray Rebuttal, Ex. 203, Page 11, Lines 19-20.

¹³⁸ Murray Rebuttal, Ex. 203, Page 12, Lines 6-13.

¹³⁹ Klote Surrebuttal, Ex. 12, Page 3, Lines 7-19.

¹⁴⁰ Klote Surrebuttal, Ex. 12, Page 15, Lines 1-6, and Confidential Schedule RAK-8.

capital to funding the deferred fuel cost collections that are the subject of this securitization, and that warrants a reasonable return until such time as that capital is paid off by the proceeds from securitization.¹⁴¹

105. Eversource West analyzed NPV outcomes for Securitization, the FAC, and a 15-year amortization, using the same 8.9 percent discount rate.¹⁴²

106. Staff's expert financial witness, Mark Davis' analysis compares a discount rate range of 5.06 percent and 8.9 percent for customary ratemaking. Staff analyzed NPV outcomes for securitization, the FAC, and deferral through an AAO, using the same discount rate range of 5.06 percent to 8.9 percent.¹⁴³

107. Public Counsel's analysis used a different discount rate for securitization than it applied to customary methods of ratemaking to yield its NPV calculations.¹⁴⁴ This is different than how both Staff and Eversource's financial experts analyzed NPV for securitization when compared to customary ratemaking.

108. Use of Eversource West's short-term debt rate is inappropriate because the amount of time Eversource's capital will be deployed exceeds one year.¹⁴⁵

Conclusions of Law

BB. Section 393.1700.2(3)(c)b requires that this financing order make a finding that the proposed securitization is expected to "provide quantifiable net present value benefits to customers" as compared to recovery of those costs without the issuance of the securitized bonds. In order to make that comparison, the Commission must determine

¹⁴¹ Reed Surrebuttal, Ex. 18, Page 7, Lines 14-26.

¹⁴² Klote Surrebuttal, Ex. 12, Confidential Schedule RAK-8.

¹⁴³ Davis Rebuttal, Ex. 106, Page 6 Line 20 through Page 7, Line 5; and Confidential workpapers of expert witness Davis, Ex. 107C.

¹⁴⁴ Murray Rebuttal, Ex. 203, Page 13, Lines 3-21.

¹⁴⁵ Reed Surrebuttal, Ex. 18, Page 7, Lines 22-24.

the appropriate discount rate to be used in the calculations of the amounts that would be recovered without securitization.

CC. Section 393.1700.2(2)(e), RSMo, requires Evergy West to provide a comparison between the NPV of the cost to customers that is estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the customary method of financing; and reflecting the qualified extraordinary costs in retail customer rates. The comparison must show that securitization would provide a quantifiable NPV benefit to customers.

Decision

This issue simply asks what discount rate should be plugged into a formula to determine whether securitization would be a quantifiable NPV benefit to Evergy West's customers. It does not have a direct impact on the amount that Evergy West should be allowed to recover through securitization. The Commission determines the appropriate discount rate to use in calculating the NPV of Winter Storm Uri costs that would be recovered through customary ratemaking is to use Evergy West's long-term debt rate of 5.06 percent.

2) What are the estimated up-front and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri?

A) What is the appropriate return on investment and treatment of earnings in the capital subaccount?

B) Is the issuance of multiple series appropriate?

The Commission will address this issue and sub-issues together.

Findings of Fact

109. Up-front and ongoing financing costs of securitization are comprised of a mix of costs that are fixed and less dependent on the size of the transaction, and costs that are variable and tied to the size, length, and execution complexity of the transaction.¹⁴⁶

110. The up-front financing costs consist of items such as underwriter fees, legal fees, and rating agency fees. The Commission advisor's costs, including Staff's advisors, would also go into the issuance.¹⁴⁷

111. The ongoing financing costs are amounts that would be collected every period through the SUTC and would include items such as the servicer cost, administrative fees, accounting fees, and ongoing rating agency fees.¹⁴⁸

112. Evergy West estimates that the up-front financing cost associated with securitizing the Winter Storm Uri costs is \$6.6 million (\$6,639,758)¹⁴⁹, Evergy West includes \$300,000 for Commission advisors.¹⁵⁰ Evergy West estimated the ongoing financing costs to be approximately \$560,000 per year.¹⁵¹

113. Staff estimates up-front financing costs to be \$6,025,325 plus the Commission's advisor costs.¹⁵² Staff recommends a lower amount of up-front financing

¹⁴⁶ Davis Rebuttal, Ex 106, Page 6, Lines 3-6.

¹⁴⁷ Transcript, Page 483, Lines 17-22. A more complete list of up-front costs is included in confidential Schedule JOH-1 attached to Humphrey's Direct Testimony, Ex. 6.

¹⁴⁸ Transcript, Pages 483-484, Lines 23-25, 1-3. A more complete list of ongoing costs is included in confidential Schedule JOH-1 attached to Humphrey's Direct Testimony, Ex. 6.

¹⁴⁹ Klote Surrebuttal, Ex. 12, Page 14, Table 1.

¹⁵⁰ Transcript, Page 106, Lines 8-11.

¹⁵¹ Humphrey Direct, Ex. 6, Page 11, Lines 11-17.

¹⁵² Bolin Surrebuttal, Ex. 101, Page 6, Table 1; Exhibit 107C, Davis confidential workpapers, Sheet MD3 Bond Financing Costs; Staff's Proposed Financing Order, Appendix C – Estimated Up-Front Financing Costs Table; and Staff's initial brief (public version) Page 16

than Evergy West due to reallocation of some costs from fixed costs to variable costs and due to an assumption of a lower securitized amount.¹⁵³ Evergy West's witness Jason Humphrey examined Staff's workpapers, and is of the opinion that the reduced up-front financing amount may be related to a reduction in Staff's overall securitized amount.¹⁵⁴

114. Staff estimates the ongoing financing costs to be \$508,905 per year. Similar to the estimated up-front financing costs calculation, Staff reallocated some costs from Evergy's estimated ongoing financing costs from fixed costs to variable costs to more appropriately calculate the costs.¹⁵⁵

115. The issuance advice letter will indicate the pricing, terms, and conditions of the bonds, as well as provide actual amounts for the total up-front financing costs and the best available estimate of total ongoing financing costs.¹⁵⁶

116. It is customary to include up-front financing costs in the principal amount of securitized utility tariff bonds.¹⁵⁷

117. IRS rules require Evergy West to contribute an amount equal to 0.5 percent of the initial aggregate principal amount of the Securitization Bonds to the SPE in the form of a capital contribution that the SPE maintains in a capital account.¹⁵⁸

118. Evergy West asserts that it is entitled to a return on the capital contribution at its authorized WACC, 8.9 percent.¹⁵⁹

¹⁵³ Exhibit 107, Davis confidential workpapers, Sheet MD3 Bond Financing Costs

¹⁵⁴ Humphrey Surrebuttal, Ex. 7, Page 5, Lines 14-23.

¹⁵⁵ Exhibit 107, Davis confidential workpapers, Sheet MD3 Bond Financing Costs

¹⁵⁶ Lunde Direct, Ex. 13, Page 40, Lines 16-18.

¹⁵⁷ Davis Rebuttal, Ex. 106, Page 7, Lines 17-19.

¹⁵⁸ Klote Direct, Ex. 11, Page 22, Lines 7-11.

¹⁵⁹ Klote Direct, Ex. 11, Page 22, Lines 11-14.

119. Staff takes issue with allowing Eversource West to earn a return on investment and earnings in the capital subaccount at 8.9 percent because Eversource West's most recently Commission determined WACC is derived from Eversource West's 2018 rate case, File No. ER-2018-0146. Staff proposes that the Commission use a WACC of 6.77 percent approved as part of ER-2019-0374 for The Empire District Electric Company d/b/a Liberty, as a proxy.¹⁶⁰

120. It is uncommon for securitization bonds to be issued in multiple series.¹⁶¹

121. Eversource contends that multiple series are not expected, but that the financing order should permit the issuance of multiple series to address any future market disruptions.¹⁶²

122. Issuance of securitization bonds in multiple series would likely result in an increased cost of issuance.¹⁶³

Conclusions of Law

DD. Section 393.1700.2(3)(c)a, RSMo, requires the Commission to include in a financing order a description and estimate of the amount of financing costs that may be recovered through securitized utility tariff charges.

EE. Section 393.1700.2(3)(c)l. RSMo, requires the Commission to include in a financing order:

A procedure that shall allow the electrical corporation to earn a return, at the cost of capital authorized from time to time by the commission in the electrical corporation's rate proceedings, on any moneys advanced by the electrical corporation to fund reserves, if any, or capital accounts

¹⁶⁰ This argument was proposed in Staff's initial brief, but there is no testimony or record evidence supporting Staff's position.

¹⁶¹ Transcript, Page 441, Lines 21-22.

¹⁶² Transcript, Page 127, Lines 1-17.

¹⁶³ Transcript, Page 441-446.

established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds.

FF. Section 393.1700.2(3)(c)e RSMo, requires the Commission to include in a financing order:

A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and financing costs and other required amounts and charges payable under the securitized utility tariff bonds.

GG. A list of items meeting the definition of “financing costs” is found at Section 393.1700.1(8), RSMo.

HH. Section 393.1700.1(16), RSMo includes “financing costs” as items that may be included in a “securitized utility tariff charge.” Subsection 393.1700.1(8)(f) authorizes the Commission to employ financial advisors and legal counsel to assist it in processing a financing application and to include the associated costs as financing costs.

Decision

The Securitization Law requires only an estimate of financing costs. The final financing costs will not be known until the securitization bonds are issued. Evergy West’s estimate of \$6.6 million for the up-front financing costs only includes \$300,000 for the Commission Staff advisors, which is insufficient to cover those costs. Staff includes no discernible amount for Commission Staff advisors, as Staff states those amounts would be borne by Evergy West regardless of whether securitization was granted. Staff estimates \$6 million plus the cost for the Commission’s advisors as its up-front financing costs without a specific amount for the Commission’s advisors. The Commission finds that Staff’s methodology for determining the estimated up-front financing costs and the

estimated ongoing financing costs is more appropriate. Therefore, the Commission finds the appropriate estimate of up-front financing cost of approximately \$6 million plus the cost of the Commission's advisors reflects an estimate of all of the costs that could be incurred. The Commission will use approximately \$508,905 per year in estimated ongoing financing costs. As stated above, these amounts will be finally known at the issuance of the securitization bonds.

The Commission finds that Evergy West's WACC of 8.9 percent to be the only viable option the parties presented that meets the securitization statutory requirements for an appropriate return on investment and treatment of earnings in the capital subaccount.

Due to the potentiality of multiple series resulting in additional costs, the Commission finds that the issuance of multiple series is not appropriate. The Commission will authorize the issuance of one series of securitized utility tariff bonds.

3) Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

Findings of Fact

123. In its direct testimony, filed along with its application, Evergy calculated a NPV benefit to customers ranging between \$64.5 million and \$121.3 million from securitizing qualified extraordinary costs.¹⁶⁴

124. At a securitization term of 15 years and a discount rate range of 8.9 percent and 5.06 percent, the implied NPV benefit of securitization would range from

¹⁶⁴ Klotz Direct, Ex. 11, Page 14, Lines 10-20; Schedule RAK-4

approximately \$55 million to \$67 million when compared to the FAC; and approximately \$8 to \$19 million when compared to deferral through an AAO.¹⁶⁵

125. At a securitization term of 15 years and a discount rate of 5.06 percent, the implied NPV benefit of securitization would provide a net present value benefit when compared to customary recovery through Evergy West's FAC.¹⁶⁶

Conclusions of Law

II. Section 393.1700.2(3)(c)b requires that this Financing Order include:

A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. ...

The Securitization Law does not require this Financing Order to include a quantification of the amount of savings. Rather, it simply requires a finding that there will be expected savings.

Decision

Based on the calculations prepared by Evergy West and Staff, the Commission finds that the proposed issuance of securitized utility tariff bonds are expected to provide quantifiable net present value benefits to customers as compared to the recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. This conclusion remains true despite the Commission's decisions to use inputs that differ from those proposed by the parties, as demonstrated in the multiple scenarios described by Staff.

¹⁶⁵ Davis Rebuttal, Ex. 106, Pages 6-7, Lines 22-26, 1-4; Ex. 107, Davis confidential work papers, Worksheet MD_1

¹⁶⁶ Ex. 107, Davis confidential work papers, Worksheet MD_1

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?

Findings of Fact

126. A principle of discounting future cash flows is to use a discount rate consistent with the risk of those cash flows. The certainty of payments under securitization necessitates a lower discount rate than under other ratemaking scenarios.¹⁶⁷

127. Evergy West proposes using its WACC for reasons addressed in the findings of fact for issue 1, sub-issue M.

128. Evergy West contends that the only appropriate discount rate to use is the same rate that it used to build the cost streams in each of the net present value scenarios (FAC and AAO). Evergy West used its WACC of 8.9 percent because that is the cost of capital that is used in setting its rates.¹⁶⁸

129. Additional discount rates have been analyzed in other instances, other than just a utility's WACC. Some of those discount rates include the cost of securitization, a utility's cost of debt, and the cost of consumer borrowing. There is no single discount rate that applies uniformly to all customers.¹⁶⁹

130. Staff's expert financial witness, Mark Davis, evaluated a range of discount rates to evaluate the net present value to customers, including Evergy West's long-term cost of debt rate of 5.06 percent to Evergy West's WACC of 8.9 percent.¹⁷⁰

Conclusions of Law

There are no additional conclusions of law for this issue.

¹⁶⁷ Murray Rebuttal, Ex. 203, Page 14, Lines 11-13.

¹⁶⁸ Reed Surrebuttal, Ex. 18, Pages 29-30, Lines 23-24, 1-8.

¹⁶⁹ Davis Rebuttal, Ex. 106, Pages 4-5, Lines 20-22, 1-6.

¹⁷⁰ Ex. 107C, confidential workpapers of Mark Davis.

Decision

A discount rate of 5.06 percent is commensurate with the risk involved in securitization, which is quite low. Evergy West's 8.9 percent is not appropriate because these costs are operational. The Commission finds that the 5.06 percent long-term debt rate is an appropriate discount rate.

B) What is the appropriate term and coupon rate for securitization of qualified extraordinary costs related to Winter Storm Uri?

Findings of fact

131. Evergy West proposes that the bonds be issued with a term of 15 years and a legal maturity date of 17 years. The legal maturity date exists to provide rating agencies and investors comfort that there would not be default if there is under collection of the principal amount of the bonds, and provides additional time to pay off the bonds in such an event.¹⁷¹

132. If the Commission authorized recovery of Winter Storm Uri costs through an AAO, Staff would recommend an amortization period of at least 15 years due to the magnitude of the costs.¹⁷²

133. Evergy West's direct filing assumed the weighted average coupon rate of securitization estimated to be 3.427 percent. Evergy West revised its coupon rate in surrebuttal based upon recent significant increases in rates. Evergy West's updated weighted average coupon rate is 4.5 percent.¹⁷³

134. The Federal Reserve recently increased interest rates by 75 basis points and has indicated that there could be more increases this year. Evergy West's expert

¹⁷¹ Transcript, Pages 446-447, Lines 20-25, 1-21,

¹⁷² Bolin Rebuttal, Ex. 100, Pages 6-7, Lines 16-23, 1-2.

¹⁷³ Lunde Surrebuttal, Ex. 14, Page 2, Lines 7-20, Based on updated cashflows from July 8, 2022.

witness ran a break-even analysis which demonstrated that even with a 4.5 percent coupon rate there was still another couple of percentage points of rate increase where securitization showed a better net present value to customers. Evergy West's analysis showed that securitization up to very high coupon rates was still the best method of recovery.¹⁷⁴

135. Evergy West's analysis showed a maximum break-even interest rate for securitization of 9.72 percent compared to an AAO and 6.986 percent compared to Evergy West's FAC based on an 8.9 percent discount rate and 8.9 percent weighted average coupon rate for the AAO and FAC NPV calculations.¹⁷⁵

136. The break-even interest rate calculated in Evergy West's surrebuttal would be lower if a 5.06 interest rate was use for both the carrying costs and discount rate.¹⁷⁶

137. Staff's net present value benefit analysis was based on updated estimated coupon rates of 4.5 percent and 5.0 percent.¹⁷⁷

138. The precise terms and conditions of the proposed securitization, such as interest rates, will not be known until just prior to the sale.¹⁷⁸

139. Considering the actual demand for the securitization bonds on the day of pricing, the underwriter will agree to purchase the securitization bonds at defined prices and coupon rates.¹⁷⁹

¹⁷⁴ Transcript, Pages 104-105, Lines 12-25, 1-19.

¹⁷⁵ Transcript, Page 456, Lines 7-13.

¹⁷⁶ Transcript, Page 456, Lines 17-25.

¹⁷⁷ Davis Rebuttal, Ex. 106, Page 6 Line 23.

¹⁷⁸ Lunde Direct, Ex. 13, Page 16, Lines 14-15; and Page 23, Line 19 to Page 20, Line 2.

¹⁷⁹ Lunde Direct, Ex. 13, Page 30, Lines 15-20.

Conclusions of Law

JJ. Section 393.1700.2(3)(c) RSMo requires the Commission find that the proposed structuring and pricing of the securitization bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitization bonds are priced and the terms of the financing order.

Decision

Eversource West's direct filing assumed a weighted average coupon rate of 3.427 percent, but the Federal Reserve has raised rates twice since that direct filing, affecting bond rates. Staff revaluated the net present value benefits calculation using a coupon rate range of 4.5 percent to 5.0 percent, reflecting movements in the benchmark treasury rate informing bond pricing. The coupon rate will ultimately be updated prior to the submission of the issuance advice letter because it is based on the investors' required return to purchase the securitization bonds. Therefore, the Commission will direct Eversource West to update the net present value benefit calculation, as part of their issuance advice letter, to demonstrate savings of the final bond condition as part of the issuance advice letter.

Eversource West has proposed a 15-year bond term with a final legal maturity date of 17 years. No party has opposed a 15-year term for the bonds. The Commission finds that a 15-year term with a final legal maturity date of 17 years is reasonable, and approves that term for the securitization bonds.

4) How should securitized utility tariff charges be allocated?

Findings of Fact

140. The SUTC is applicable to all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021.¹⁸⁰

141. Eversource West's FAC recovers costs from customers based upon energy consumption adjusted for loss (loss-adjusted energy sales).¹⁸¹

142. Eversource West originally proposed allocating the SUTC based upon the customer class revenue allocations adopted by the Commission in File No. ER-2018-0146.¹⁸²

143. Allocating the SUTC by customer class could produce unreasonable results in its own operation, and potentially contribute to rate switching. As a class grows that class's customers will pay a lower SUTC. If a large customer changed rate schedules or ceased service that could result in fluctuations in customer bills within the subject classes.¹⁸³

144. Winter Storm Uri costs consist primarily of fuel and purchased power costs that would typically be recovered through the FAC. Through the FAC, the net costs are recovered from customers on the basis of energy consumption, as adjusted for losses.

¹⁸⁰ Lange Rebuttal, Ex. 104, Page 6, Lines 1-5.

¹⁸¹ Lange Rebuttal, Ex. 104, Page 20, Lines 1-8.

¹⁸² Lutz Direct, Ex. 15, Page 8 Line 15 to Page 9 Line 2; and Page 9, Figure 1

¹⁸³ Lange Rebuttal, Ex. 104, Page 14, Lines 2-6.

Staff's recommended approach would be for the SUTC to be recovered from all applicable customers on the basis of loss-adjustment energy sales.¹⁸⁴

145. Staff's loss-adjusted energy sales recovery eliminates the SUTC volatility associated with rate-switching, mitigates the SUTC volatility associated with customers leaving the system, mitigates the SUTC volatility associated with customer growth, and will smooth potential variation in the SUTC in place over time.¹⁸⁵

146. Under Evergy's class allocation methodology, new customers served in the newly-promulgated EV and MKT rate schedules, as well as existing CCN customers, would be billed \$0.00/kWh; which is not consistent with the nonbypassability requirements of the Securitization Law.¹⁸⁶

147. Under Staff's recommended approach, new customers under the newly-promulgated EV and MKT rate schedules would be billed the same rate as other customers served at the same level of distribution services.¹⁸⁷

148. Evergy West in its surrebuttal agreed with Staff that the SUTC should be allocated to Evergy West's customers based upon loss-adjusted energy sales since it is consistent with the FAC.¹⁸⁸

Conclusions of Law

KK. Section 393.1700.2(3))(c)h, RSMo requires this financing order to determine "how securitized utility tariff charges will be allocated among retail customer classes."

¹⁸⁴ Lange Rebuttal, Ex. 104, Page 20 Lines 6-13

¹⁸⁵ Lange Rebuttal, Ex. 104, Page 15, lines 6-11.

¹⁸⁶ Lange Rebuttal, Ex. 104, Page 20 Line 20 to Page 21 Line 3.

¹⁸⁷ Lange Rebuttal, Ex. 104, Page 20 Lines 14-19

¹⁸⁸ Lutz Surrebuttal, Ex. 16, Page 3, Lines 1-19

LL. The Commission has much discretion in determining the theory or method it uses in determining rates¹⁸⁹ and can make pragmatic adjustments called for by particular circumstances.¹⁹⁰

MM. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying “[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of fact. It has no claim to an exact science.”¹⁹¹

NN. The definition of “securitized utility tariff charge” found at Section 393.1700.1(16) indicates that such charge is nonbypassable.

Decision

Both MEGC and Velvet advocated strongly for allocation by customer class, as contained in Eversource West’s direct filing. MEGC argues that the appropriate allocation method is the one adopted by the Commission in Eversource West’s 2018 rate case, File No. ER-2018-0146. MEGC also asserts that allocation method is consistent with the Securitization Law, and more closely aligns Winter Storm Uri costs by cost causation.

Both MEGC and Velvet argue that allocation on an energy-based charge places recovery of Winter Storm Uri costs disproportionately on Eversource West’s largest customers. However, loss-adjusted allocations not only mirrors how cost recovery occurs under

¹⁸⁹ *State ex rel. Public Counsel v. Public Service Com’n*, 274 S.W.3d 569, 586 (Mo. App. 2009).

¹⁹⁰ *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com’n* 795 S.W.2d 593, 597 (Mo. App. 1990)

¹⁹¹ *Spire Missouri, Inc. v. Missouri Public Service Com’n* 607 S.W.3d 759, 771 (Mo. App. 2020), quoting *National Ass’n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

Evergy West's FAC, but it also solves many of the problems involving recovery through securitization and conventional allocation by customer class. Allocations by class will change from one general rate case to another, but recovery through securitization is both nonbypassable and occurs over a 15-year time frame. Electrical companies have to file a general rate case to continue their FAC. Evergy West is required to come to the Commission for a rate case every four years if it wishes to continue its FAC.¹⁹² There will most likely be several Evergy West rate cases prior to complete recovery of Winter Storm Uri costs through securitization, and it is highly likely that there will be some changes to Evergy West's class cost allocations over 15 years. Allocation by loss-adjusted energy sales ensures that even if class cost allocations change in a rate case it will not shift ratepayer's responsibility for recovery of Winter Storm Uri costs from one customer to another, or encourage customers to migrate to another rate schedule.

The proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.

5) What, if any, additions or changes should be made to the Storm Securitized Utility Tariff Rider proposed by Evergy West?

Findings of Fact

149. Evergy West submitted an exemplar Securitized Utility Tariff Rider as part of its direct filing. Evergy's exemplar tariff referenced the Financing Order for details on the SUTC and included a table of the monthly billing rate for each rate class.¹⁹³

¹⁹² P.S.C. MO. No. 1, Original Sheet No. 127.13.

¹⁹³ Lutz Direct, Ex. 15, Schedule BDL-1, Exemplar Securitized Utility Tariff Rider.

150. Staff witness, Lange, noted that Evergy West's exemplar Securitized Utility Tariff Rider did not reasonably accommodate implementation of any financing order issued in this case.¹⁹⁴

151. The exemplar tariff did not contain elements and other language that Staff thought should be included in a Securitized Utility Tariff Rider, such as a true-mechanism; nonbypassability of the SUTC for retail customers; how the SUTC should appear on customer's bills; or an approach for allocation of late and partial payments.¹⁹⁵

152. It is best practice for applicable mechanisms from the financing order to be reflected in the tariff to mitigate the need to reference external sources when executing the tariff.¹⁹⁶

153. Evergy submitted a revised tariff addressing some of Staff's comments.¹⁹⁷ Most of Staff's issues were resolved in Evergy's revised tariff.¹⁹⁸

154. Staff witness Lange and Evergy West witness Lutz worked together to design a Securitized Utility Tariff Rider in support of the *Non-Unanimous Stipulation and Agreement* submitted in this case, which was included in a Specimen Exemplar Tariff. The first five pages of that exhibit contain the language that Staff deems necessary¹⁹⁹ for a Securitized Utility Tariff Rider to contain.²⁰⁰

Conclusions of Law

There are no additional conclusions of law for this issue.

¹⁹⁴ Lange Rebuttal, Ex. 104, Page 4, Lines 12-16.

¹⁹⁵ Lange Rebuttal, Ex. 104, Pages 4-18 and Transcript V3 Pages 365-371

¹⁹⁶ Lange Rebuttal, Ex. 104, Page 14, Lines 41-43.

¹⁹⁷ Lutz Surrebuttal, Ex. 16, Schedule BDL-3

¹⁹⁸ Transcript V3, Pages 369-371

¹⁹⁹ Staff's initial brief at page 21, and Staff's reply brief at page 11. Evergy West Reply brief at page 33.

²⁰⁰ Ex. 108, Specimen Exemplar Tariff. Page six of the exemplar tariff contains the Securitized Revenue Requirement and Rate, but does not contain the input amounts approved by the Commission in this order.

Decision

Evergy West's proposed exemplar Securitized Utility Tariff Rider, as submitted, did not contain the necessary elements to implement this financing order, and did not follow best practices so that it could be executed without referencing an external source such as this Financing Order. Exhibit 108, the Specimen Exemplar Tariff submitted by Staff, and developed by Staff witness Lange and Evergy West witness Lutz, addresses Staff's issues concerning the tariff rider language, and has not been objected to by Evergy West or any other party.

The language in Exhibit 108, the Specimen Exemplar Tariff, is appropriate for the implementation of this financing order, independent of the calculations therein, which support the rejected Stipulation. The Commission finds that the changes included in that exhibit make the necessary changes to Evergy West's exemplar tariff. The Commission will approve that tariff language in Exhibit 108 for use in the Securitized Utility Tariff Rider.

6) Regarding any designated staff representatives who may be advised by a financial advisor or advisors, what provision or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)(h) RSMo?

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo, to be included in the financing order?

The Commission will address these two sub-issues together.

Findings of Fact

155. The Securitization Law authorizes the Commission, to designate in a financing order one or more Staff representatives and advisors to collaborate with the utility in the bond marketing process and to assist the Commission in evaluating the reasonableness of the pricing, terms and conditions of the securitized utility tariff bonds,

and to ensure that securitization transactions provide quantifiable net present value benefits to a utility's customers.²⁰¹

156. Evergy West's proposal for the Commission's review is inadequate. Evergy West intends that the Commission only review the final amount as part of the issuance advice letter.²⁰² The issuance advice letter is delivered to the Commission sometimes on the day of pricing but no later than the day following pricing.²⁰³ It would be troublesome if the designated Staff representative's participation is limited to advising the Commission whether to approve or disapprove the issuance advice letter.²⁰⁴

157. Many details about the securitization bond's costs are not known and will not be known until the bonds are ready to be issued. Commission Staff review of cost amounts prior to those costs being finalized is appropriate and provides a level of involvement that is beneficial to achieving the statutory net benefits objective.²⁰⁵

158. The Securitization Law does allow the Commission to reject the securitization by disapproving the issuance advice letter prior to noon on the fourth business day after the commission receives the issuance advice letter.²⁰⁶ However, if the Commission were to reject the issuance advice letter it would be catastrophic from a capital market perspective.²⁰⁷ Future attempts to implement a securitization could be negatively impacted.²⁰⁸ It is preferable that the Commission take whatever steps are

²⁰¹ Davis Rebuttal, Ex. 106, Page 8, Lines 7-11.

²⁰² Davis Rebuttal, Ex. 106, Page 8, Lines 14-16.

²⁰³ Transcript, Page 115, Lines 17-20.

²⁰⁴ Transcript, Page 486, Lines 15-19.

²⁰⁵ Davis Rebuttal, Ex. 106, Page 8, Lines 11-13.

²⁰⁶ Section 393.1700.2(3)(h) RSMo.

²⁰⁷ Transcript, Page 487, Lines 6-8.

²⁰⁸ Transcript, Page 114, Lines 20-24.

necessary to limit the possibility that the issuance advice letter needs to be rejected.²⁰⁹ Ultimately what's very important in the review process is making sure that the structure, marketing, and pricing are set up in a way where there's no need to reject the issuance advice letter at the end of the process.²¹⁰

159. A best practice is to establish a designated representative review process in advance of the issuance advice letter.²¹¹ Feedback from the Commission and Commission Staff throughout the marketing, structuring, and pricing process, with a review process established within the financing order best ensures the statutory net present value objective is achieved and minimizes the risk of the issuance advice letter ultimately being rejected.²¹² Thus, there is a need for interim review and the ability for Commission Staff to regularly update the Commission and transmit feedback as necessary.²¹³

160. Other parties may not have an incentive to protect the interest of ratepayers, who are solely responsible for the cost of the financing.²¹⁴ Therefore, the financing order should provide for the designated representative and its advisor, to be involved, provide input, and collaborate with Evergy West in all facets of the bond structuring, marketing, and pricing processes for the bonds, as well as the hiring of underwriters and other deal participants.²¹⁵

²⁰⁹ Transcript, Page 116, Lines 6-10.

²¹⁰ Transcript, Page 434, Lines 6-10.

²¹¹ Transcript, Page 487, Lines 16-17.

²¹² Davis Rebuttal, Ex. 106, Page 12, Lines 4-7.

²¹³ Davis Rebuttal, Ex. 106, Page 8, Lines 19-20.

²¹⁴ Davis Rebuttal, Ex. 106, Page 11, Lines 3-5.

²¹⁵ Davis Rebuttal, Ex. 106, Page 10, Lines 10-12.

161. Eversource West should have the flexibility to establish repayment schedules, coupons, financing costs, and other bond terms and conditions, so long as Commission Staff is provided the necessary ability to provide input and collaborate, and notify the Commission of any objections as necessary.²¹⁶

162. In its proposed draft financing order, Staff included a section addressing the rights and responsibilities of a designated representative. Staff would advise the Commission to designate representatives from Commission staff, who will be advised by financial and other advisors, including outside counsel, to provide input to Eversource West and collaborate with it in all facets of the process to place the securitized utility tariff bonds to market, so the designated representative can provide the Commission with an opinion on the reasonableness of the bonds on an expedited basis. The designated Staff representatives would be given authority to “review all facets of the structuring, marketing and pricing bond processes.” Further, the designated representative would be allowed to “attend all meetings and participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds.”²¹⁷

Conclusions of Law

OO. Section 393.1700.2(3)(h) RSMo, provides that before securitization bonds are issued, the electrical corporation is required to provide an “issuance advice letter” to the Commission describing the final terms of the bonds. The Commission is allowed only until noon on the fourth business day after it receives the issuance advice letter to issue a disapproval letter directing that the bond issuance as proposed should not proceed.

²¹⁶ Davis Rebuttal, Ex. 106, Page 12, Lines 19-23.

²¹⁷ Staff's draft Financing Order, Pages 20-22.

PP. So that the Commission will have sufficient insight into the bond placing process to be able to evaluate the issuance advice letter in the short amount of time allowed, Section 393.1700.2(3)(h), RSMo, gives the Commission authority to:

designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis.

QQ. Section 393.1700.2(3)(h) also expressly limits the authority of the Commission's representative or representatives, stating:

Neither the designated representative or representatives from the commission's staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market.

RR. Importantly, Section 393.1700.2(3)(h) also allows the Commission to include provisions in the financing order "relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section."

SS. Section 393.1700.2(3)(a)b contemplates that the Commission may issue a financing order approving the petition "subject to conditions."

TT. Section 393.1700.2(3)(c)c requires a financing order to include:

A finding that the proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

Decision

This Securitization Law is a relatively new statute and this is only the third securitization petition to come before the Commission. The previous two cases were for one regulated utility and resulted in one financing order. So, this will be the Commission's second financing order. The Commission necessarily has some concerns. Unlike other cases before the Commission, a financing order authorizes Evergy West to take the necessary steps to issue securitization bonds where the final interest coupon rate and total securitization amounts are unknown as of the issuance of this order.

The Commission's only recourse if the issuance advice letter is unsatisfactory is to reject it by issuing a disapproval letter by noon of the fourth day following receipt of the issuance advice letter, directing that the bonds not be issued. Both Staff and Evergy West's financial experts explained that option would be catastrophic from a capital market perspective. The Commission will not have any ability to modify or nullify the financing order or the securitization bonds once issued, and that is as it should be from a market perspective. In order to ensure the interest of the ratepayers are represented during the structuring, marketing and pricing phase, the Commission believes that Staff's proposal to include one or more designated representatives from Staff, financial advisors, and outside counsel, (collectively "Finance Team") is appropriate and within the bounds set by the Securitization Law. The Finance Team should be allowed to be involved in the process with the understanding that the Finance Team does not have authority to approve that process. Pursuant to the Securitization Law the Finance Team may review, provide input, collaborate, and report to the Commission. It is ultimately up to the Commission to approve the issuance of the securitization bonds.

To that end, the Commission will authorize the Finance Team to participate with Evergy West in the process of placing the securitization bonds to market. To ensure that the structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff bond charges consistent with market conditions and the terms of this Financing Order, the Commission authorizes the Finance Team to review, provide input and oversight, and collaborate on the structuring, marketing and pricing of the securitized utility tariff bonds and related transaction documents. The costs of such Finance Team should constitute financing costs.

The Finance Team's participation is not to interfere with the process of placing the bonds to market but to act as the Commission's proxy in providing oversight and input on the transaction to confirm that the transaction provides quantifiable net present value benefits to customers compared to the use of traditional ratemaking and results in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced.

The Finance Team shall have the right to review, provide input, and collaborate on all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Evergy West and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions;

(10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The preceding and other items may be reviewed by the Finance Team during the entire pre-issuance process. The pre-issuance review process will help ensure that the securitized utility tariff bonds will be issued with material terms that meet the requirements of the Securitization Law. The Finance Team's review shall continue until the issuance advice letter is disapproved, approved, or takes effect by operation of law.

The Commission may require status meetings or phone conferences with the Finance Team and involved parties to communicate and update the Commission on the information being reviewed and prepared in the structuring and pricing process. The Commission may request access to the actual documents and information being reviewed by the Finance Team as needed. The Finance Team may submit written status reports to the Commission as it deems appropriate or as requested by the Commission. If concerns arise during the process, such status meetings, conferences or updates can be requested by the Finance Team or other involved parties as needed.

The Finance Team does not have the authority to direct how Evergy West places the securitized utility tariff bonds to market, but it shall be permitted to attend all meetings convened by Evergy West, and participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.

Supplementary to the submission of the issuance advice letter, Evergy West and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff

bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. Such certificates shall be a condition precedent to the submission of the issuance advice letter to the Commission.

The securitized tariff bonds issued in compliance with this order shall have a triple-A rating from at least two of the nationally recognized rating agencies.

8) Should the Commission grant a waiver under Section 10(A)(1) of the Affiliate Transactions Rule between Evergy West and the SPE?

Findings of Fact

163. Evergy West does not believe that the SPE is an affiliate.²¹⁸

164. Evergy West contends that the SPE's activities will be restricted to acquiring the securitized property, issuing the securitization bonds, collecting the SUTC, and paying principal and interest on the bonds to the bondholders. The SPE will be overseen by an independent manager.²¹⁹

165. The asymmetrical pricing requirement of Commission Rule 20 CSR 4240-20.015 requires a regulated utility to obtain the lower of fair market price or fully

²¹⁸ Ives Direct, Ex. 8, Page 18, Lines 4-5.

²¹⁹ Ives Direct, Ex. 8, Page 18, Lines 6-11.

distributed costs for services provided to them by affiliates while also receiving the greater of market price or fully distributed costs for services it provides to affiliates.²²⁰

166. There is good cause to grant a waiver of the asymmetrical pricing provisions of the Commission's affiliate transactions rule because the SPE will mainly perform corporate support functions such as the collection of the fees, any servicing fees, and some administrative duties.²²¹

167. Staff does not oppose a waiver, but asserts that the sections of the affiliate transactions rule that apply to record keeping should not be waived because Staff will need to review the securitization-related affiliate transactions in a future rate case to ensure that the assignment of costs to the SPE is appropriate.²²²

Conclusions of Law

UU. Commission Rule 20 CSR 4240-20.015(1)(A) defines an affiliated entity as being directly or indirectly controlled by, or under common control with, a regulated electrical corporation.

VV. Commission Rule 20 CSR 4240-20.015(2)(A) provides:

A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

- A. The fair market price; or
- B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

²²⁰ Bolin Surrebuttal, Ex. 101, Page 2, Lines 1-21.

²²¹ Transcript, Page 343, Lines 10-15.

²²² Bolin Surrebuttal, Ex. 101, Page 3, Lines 4-9.

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

- A. The fair market price; or
- B. The fully distributed cost to the regulated electrical corporation.

Decision

The Commission disagrees with Evergy West's assertion that the SPE is not an affiliate of the utility. The Commission also concurs with Staff's oversight concerns. Even if the SPE performs only corporate support functions, without adherence to the record keeping requirements of the affiliate transactions rule the Commission would have no way to review the securitization-related affiliate transactions to ensure that the assignment of costs is appropriate. The Commission finds that the SPE is an affiliate of Evergy West. The Commission will grant a waiver of the asymmetrical pricing provisions of the Commission's affiliate transactions rule, but not of the portions of the affiliate transactions rule relating to record retention.

Non-contested Issues

The Commission makes the following findings of fact.

A) Identification and Procedure

Identification of Petitioner and Background

168. Evergy Missouri West, Inc. d/b/a Evergy Missouri West is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. Evergy West is engaged in the generation, transmission, distribution, and sale of electricity in Missouri. Evergy West is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision, and control of the Commission as provided by law. Evergy West is a wholly owned subsidiary of Evergy, Inc. A certificate

of authority for Evergy West, as a foreign corporation, to do business in Missouri, was filed with the Commission in Case No. EN-2020-0064.

B) Financing Costs and Amount of Securitized Utility Tariff Costs to be Financed

Identification

169. The actual amount of up-front financing costs of the securitized utility tariff bonds will not be known until the securitized utility tariff bonds are sold and such amounts are approved in the issuance advice letter. The actual amount of certain ongoing financing costs relating to the securitized utility tariff bonds may not be known until such costs are incurred; provided that the securitization structure will limit the amount of ongoing financing costs to amounts appropriate for the size of the transaction.

170. Evergy West will use the proceeds from the sale of the securitized utility tariff property to recover costs incurred as a result of the anomalous weather event Winter Storm Uri, consisting of qualified extraordinary costs and financing costs, in accordance with the Securitization Law and this Financing Order.

171. The proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order.

172. The securitized utility tariff bonds will be secured by securitized utility tariff property that shall be created in favor of Evergy West or its successors or assignees and that shall be used to pay or secure the securitized utility tariff bonds and approved financing costs. The securitized utility tariff property principally consists of the right to receive revenues from the securitized utility tariff charges.

173. It is appropriate that Eversource West be authorized to establish the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs, except as expressly limited in this Financing Order. The Finance Team will review the complete terms and conditions of the securitized utility tariff bonds, the calculations of the initial securitized utility tariff charges, the expected and actual up-front and ongoing financing costs and the net present value calculations set forth in the issuance advice letter.

174. After the final terms of the securitized utility tariff bonds have been established and before the issuance of such bonds, it is appropriate for Eversource West to determine the resulting initial securitized utility tariff charge in accordance with this Financing Order, and that such initial charge be final and effective upon the issuance of such securitized utility tariff bonds with such charge to be reflected on a compliance tariff sheet bearing such charge that will be submitted to the Commission at the same time as the issuance advice letter.

175. Eversource West proposed a method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property.

176. Eversource West shall earn a return, at the WACC of 8.9 percent authorized from time to time by the Commission in Eversource West's rate proceedings, on any moneys advanced by Eversource West to fund the capital subaccount established under the terms of the indenture or other financing documents pertaining to the securitized utility tariff bonds. This return shall be included as an ongoing financing cost to be paid through the collection of securitized utility tariff charges.

177. It is appropriate that Evergy West shall be authorized to issue securitized utility tariff bonds pursuant to this Financing Order for an “effective period” commencing with the date of this Financing Order and extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, it is appropriate for the effective period to be extended in consultation with the Finance Team to a date which is not less than 90 days after the date such disruption ends.

Issuance Advice Letter

178. As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time this Financing Order is issued, prior to the issuance of the securitized utility tariff bonds, Evergy West will provide an issuance advice letter to the Commission following the determination of the final terms of the securitized utility tariff bonds no later than one day after the pricing of the securitized utility tariff bonds. The issuance advice letter will include total up-front financing costs for the issuance. The form of such issuance advice letter, which shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs, is set out in Appendix A to this Financing Order. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as required under this Financing Order. The issuance advice letter will demonstrate the quantifiable net present value savings from the issuance of the securitized utility tariff bonds as compared to the customary method of financing. Evergy West may proceed with the issuance of the securitized utility tariff bonds unless,

prior to noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

179. If the actual up-front financing costs are less than the up-front financing costs included in the principal amount securitized, the amount of such unused funds (together with interest, if any, earned on the investment of such funds) will be returned to customers in a general rate proceeding. If the actual up-front financing costs are more than the up-front financing costs included in the principal amount securitized, Evergy West will have the right to be reimbursed for such prudently incurred excess amounts through the establishment of a regulatory asset.

180. Evergy West will submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of commencement of marketing the securitized utility tariff bonds. The Finance Team will review the issuance advice letter and provide timely feedback to Evergy West based on the progression of structuring, marketing and pricing of the securitized utility tariff bonds.

181. The issuance advice letter for the securitized utility tariff bonds must be submitted to the Commission not later than one day after the pricing of the securitized utility tariff bonds. The Finance Team may request such revisions to the issuance advice letter as may be necessary to ensure the accuracy of the calculations and information included and that the requirements of the Securitization Law and of this Financing Order have been met. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter must become effective on the date of issuance of the securitized utility tariff bonds (which must not occur before

the fifth business day after pricing of the securitized utility tariff bonds) unless before noon on the fourth business day after the Commission receives the issuance advice letter the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

C) Structure of the Proposed Securitization

Special Purpose Entity

182. For purposes of issuing the securitized utility tariff bonds, Evergy West will create a bankruptcy-remote SPE, which will be a Delaware limited liability company with Evergy West as its sole member. The SPE will be formed for the limited purpose of acquiring securitized utility tariff property, issuing securitized utility tariff bonds in one or more tranches, and performing other activities relating thereto or otherwise authorized by this Financing Order. The SPE will not be permitted to engage in any other activities and will have no assets other than securitized utility tariff property and related assets to support its obligations under the securitized utility tariff bonds. Obligations relating to the securitized utility tariff bonds will be the SPE's only material liabilities. These restrictions on the activities of SPE and restrictions on the ability of Evergy West to take action on the SPE's behalf are imposed to achieve the objective that the SPE will be bankruptcy-remote and not affected by a bankruptcy of Evergy West or any other person. The SPE will be managed by a board of directors or a board of managers with rights and duties similar to those of a board of directors of a corporation. As long as the securitized utility tariff bonds remain outstanding, the SPE will be overseen by at least one independent director or manager whose approval will be required for any bankruptcy-related actions and certain other major actions or organizational changes. The SPE will not be permitted to amend

the provisions of the organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent directors or managers. Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent director or manager. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the rating agencies.

183. The initial capital of the SPE will be not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds issued by the SPE. Adequate funding of the SPE at this level is intended to protect the bankruptcy-remoteness of the SPE.

Statutory Requirements

184. The SPE will issue securitized utility tariff bonds in one series consisting of one or more tranches. The aggregate principle amount of all tranches of the securitized utility tariff bonds issued under this Financing Order must not exceed the principal amount approved by this Financing Order. The SPE will pledge to the indenture trustee, as collateral for payment of the securitized utility tariff bonds, the securitized utility tariff property, including the SPE's right to receive the securitized utility tariff charges as and when collected, and certain other collateral described herein.

185. Concurrent with the issuance of any of the securitized utility tariff bonds, Evergy West will sell to the SPE the securitized utility tariff property, consisting of all of the following: (a) Evergy West's rights and interests under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges

as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds. This transfer will be structured so that it will qualify as a “true sale” within the meaning of Section 393.1700.5.(3) and that such rights will become securitized utility tariff property concurrently with their sale to the SPE as provided in Section 393.1700.2.(3)(d). By virtue of the transfer, the SPE will acquire all of the right, title, and interest of Eversource West in the securitized utility tariff property arising under this Financing Order.

Credit Enhancement and Arrangements to Enhance Marketability

186. Eversource West is permitted to recover the ongoing costs of any credit enhancements and arrangements to enhance marketability, if such credit enhancements are required by the rating agencies to achieve the highest possible credit rating on the securitized utility tariff bonds and subject to consultation with the Finance Team. If the use of more than de minimis original issue discount, credit enhancements, or other arrangements is proposed by Eversource West, Eversource West must provide the Finance Team with copies of all cost-benefit analyses performed by or for Eversource West that support the request to use such arrangements. This finding does not apply to the collection account or its subaccounts to be established under the indenture set forth in this Financing Order.

Securitized Utility Tariff Property

187. Securitized utility tariff property and all other collateral will be held and administered by the indenture trustee under the indenture.

Servicer and the Servicing Agreement

188. Evergy West, as the initial servicer of the securitization property, will enter into a servicing agreement with the SPE, as owner of the securitization property. The servicing agreement may be amended, renewed or replaced by another servicing agreement subject to certain conditions set forth therein. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. Evergy West will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission. Under the servicing agreement, the servicer is required to, among other things, impose and collect the securitized utility tariff charges for the benefit and account of the SPE, make the periodic true-up adjustments of securitized utility tariff charges required or permitted by this Financing Order, and account for and remit the securitized utility tariff charges to or for the account of the SPE in accordance with the remittance procedures contained in the servicing agreement and the indenture without any charge, deduction or surcharge of any kind. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized utility tariff bonds, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized utility tariff bonds, must, appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer

will perform the obligations of the servicer under the servicing agreement. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement. The rights of the SPE under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized utility tariff bonds.

189. The obligations to continue to provide service and to collect and account for securitized utility tariff charges will be binding upon Evergy West and any other entity that provides electrical services to a person that is a retail customer located within Evergy West's service area as it exists on the date of this Financing Order, or that became a retail customer for electric services within such service area after the date of this Financing Order, and is still located within such area.

190. To the extent that Evergy West assigns, sells or transfers any interest in its transmission or distribution system (or any portion thereof) to an assignee,²²³ Evergy West will enter into a contract with that assignee that will require the entity acquiring such facilities to continue operating the facilities to provide electric services to Evergy West's customers, subject to approval of the Commission and in accordance with the other conditions set forth in the servicing agreement and this Financing Order.

Securitized Utility Tariff Bonds

191. The SPE will issue and sell securitized utility tariff bonds in one series consisting of one or more tranches. The legal final maturity date of the securitized utility

²²³ The term assignee means any corporation, Limited Liability Company, general partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an interest in securitized utility tariff property is transferred, other than as security, including any assignee of that party. See § 393.1700.1.(2).

tariff bonds will not exceed 17 years from the date of issuance. The legal final maturity date and principal amounts of each tranche will be finally determined by Evergy West in consultation with the Finance Team, consistent with market conditions and indications of the rating agencies, at the time the securitized utility tariff bonds are priced, but subject to ultimate Commission review through the issuance advice letter process. Subject to the conditions and criteria set forth in this Financing Order, Evergy West will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning securitized utility tariff property arising under this Financing Order, or to cause the issuance of any securitized utility tariff bonds authorized in this Financing Order, subject to the right of the Commission to issue a disapproval letter.

Security for Securitized Utility Tariff Bonds

192. The payment of the securitized utility tariff bonds and related charges authorized by this Financing Order is to be secured by the securitized utility tariff property created by this Financing Order and certain other collateral as described herein. The securitized utility tariff bonds will be issued under an indenture administered by the indenture trustee. The indenture will include provisions for a collection account for the series and subaccounts for the collection and administration of the securitized utility tariff charges and payment or funding of the principal and interest on the securitized utility tariff bonds and ongoing financing costs in connection with the securitized utility tariff bonds approved in this Financing Order. In accordance with the indenture, a collection account will be established as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and ongoing financing costs approved in this Financing Order related to the securitized utility tariff bonds in full and on a timely

basis. The collection account will include the general subaccount, the capital subaccount, and the excess funds subaccount, and may include other subaccounts.

The General Subaccount

193. The indenture trustee will deposit the securitized utility tariff charge remittances that the servicer remits to the indenture trustee for the account of the SPE into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay principal of and interest on the securitized utility tariff bonds, to pay ongoing financing costs and to replenish any draws on the capital subaccount. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement (as defined in finding of fact number 203), and otherwise in accordance with the terms of the indenture.

The Capital Subaccount

194. Evergy West will make a capital contribution to the SPE, which the SPE will deposit into the capital subaccount. The amount of the capital contribution will be not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds, although the actual amount will depend on tax and rating agency requirements. The capital subaccount will serve as collateral to ensure timely payment of principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. Any funds drawn from the capital account to pay these

amounts due to a shortfall in the securitized utility tariff charge remittances will be replenished through future securitized utility tariff charge remittances. The funds in the capital subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including investment earnings) will be used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. Evergy West will be authorized to receive a return on the capital contribution at the WACC of 8.9 percent as ongoing financing costs recoverable through the securitized utility tariff charge. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations that may be paid by use of securitized utility tariff charges, all amounts remaining in the capital subaccount at that time, will be released to the SPE for payment to Evergy West. Evergy West will account for any investment earnings on funds in the capital subaccount in a reconciliation in a general rate case and such amounts will be credited to ratepayers.

The Excess Funds Subaccount

195. The excess funds subaccount will hold any securitized utility tariff charge remittances and investment earnings on the collection account in excess of the amounts needed to pay current principal of and interest on the securitized utility tariff bonds and to pay other total securitized revenue requirements (including, but not limited to, replenishing the capital subaccount). Any balance in or allocated to the excess funds subaccount on a true-up adjustment date will be subtracted from the total securitized revenue requirement (as defined in finding of fact number 203) for purposes of the true-up adjustment. The money in the excess funds subaccount will be invested by the indenture trustee in short-term high-quality investments, and such money (including

investment earnings thereon) will be used by the indenture trustee to pay principal and interest on the securitized utility tariff bonds and other total securitized revenue requirements.

Other Subaccounts

196. Other credit enhancements in the form of subaccounts may be utilized for the transaction provided that the use of such subaccounts is consistent with the Statutory Requirements and subject to consultation with the Finance Team. For example, Evergy West does not propose use of an overcollateralization subaccount. Under Rev. Proc. 2002-49, as modified, amplified and superseded by Rev. Proc. 2005-62 issued by the IRS, the use of an overcollateralization subaccount is not necessary for favorable tax treatment nor does it appear to be necessary to obtain AAA ratings for the proposed securitized utility tariff bonds. If Evergy West subsequently determines in consultation with the Finance Team that use of an overcollateralization subaccount or other subaccount is necessary to obtain AAA ratings from the credit agencies or will otherwise increase the quantifiable net present value benefits of the securitization, Evergy West may implement such subaccounts to reduce securitized utility tariff bond charges.

General Provisions

197. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. If the amount of securitized utility tariff charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the securitized utility tariff bonds and to make payment on all of the other components of the

total securitized revenue requirement, the excess funds subaccount and the capital subaccount will be drawn down, in that order, to make those payments. Any deficiency in the capital subaccount due to such withdrawals must be replenished to the capital subaccount on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture. Upon the maturity of the securitized utility tariff bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital subaccount, will be released to the SPE and equivalent amounts will be credited by Evergy West to customers. In addition, upon the maturity of the securitized utility tariff bonds, any subsequently collected securitized utility tariff charges shall be credited to retail customers.

Securitized Utility Tariff Charges—Imposition and Collection, Nonbypassability, and Alternative Electric Suppliers

198. In the event the State of Missouri permits third-party billing, the securitized utility tariff charges must continue to be collected by a third-party biller and remitted to the SPE.

199. Securitized utility tariff charges will be identified on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill. Each customer bill shall include a statement to the effect that the SPE is the owner of the rights to securitized utility tariff charges and that Evergy West is acting as servicer for the SPE. The tariff applicable to customers shall indicate the securitized utility tariff charge and the ownership of the charge.

200. If any customer does not pay the full amount it has been billed, the amount collected will be prorated among charge categories in proportion to their percentage of the overall bill, with the first dollars collected attributed to past due balances, if any.

201. Evergy West will collect securitized utility tariff charges from all existing or future retail customers receiving electrical service from Evergy West or its successors or assignees under Commission-approved rate schedules, except for customers receiving electrical service under special contracts²²⁴ as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a change in regulation of public utilities in Missouri. Any such existing or future retail customer within such area may not avoid securitized utility tariff charges by switching to another electrical corporation, electric cooperative, or municipally owned utility on or after the date this Financing Order is issued.

202. The imposition and collection of securitized utility tariff charges set forth in this Financing Order is reasonable and is necessary to ensure collection of securitized utility tariff charges sufficient to support recovery of the securitized utility tariff costs and financing costs approved in this Financing Order. The form of Securitized Utility Tariff Rider included in this Financing Order is reasonable and these tariff provisions will be filed before any securitized utility tariff bonds are issued under this Financing Order.

Allocation of Financing Costs Among Missouri Retail Customers

203. The total securitized revenue requirement is the required securitized revenues for a given period (e.g., annually, semi-annually, or quarterly) due under the securitized utility tariff bonds. Each total securitized revenue requirement includes: (a) the

²²⁴ See Section 393.1700.1.(19) RSMo.

principal amortization of the securitized utility tariff bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the securitized utility tariff bonds (including any accrued and unpaid interest); (c) ongoing financing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, other ongoing fees and expenses approved herein, and the costs, if any, of maintaining any credit enhancement; (d) bad debts net of prior recovery period collections; and (e) for each of (a) through (d), any variations calculated through a reconciliation of the current period total securitized revenue requirement actuals to the projections, forecasts, or estimates to the extent that actuals are available. The initial total securitized revenue requirement for the securitized utility tariff bonds issued under this Financing Order will be updated in the issuance advice letter, subject to review and consultation with the Finance Team.

204. The securitized utility tariff costs and financing costs that will be recovered through the securitized utility tariff charges authorized by this Financing Order are allocated to all applicable customers on the basis of loss-adjusted energy sales. The securitized utility tariff costs applicable to customers served at each voltage level is accomplished by first dividing the sum of the amounts described above by the forecasted recovery period retail sales to all applicable customers (adjusted to generation voltage) by the voltage level expansion factor applicable to each service voltage.

True-Up of Securitized Utility Tariff Charges

205. The servicer of the securitized utility tariff bonds will use a formula-based true-up mechanism to make periodic, expeditious adjustments, at least annually, to the securitized utility tariff charges to:

- (a) correct any undercollections or overcollections that may have occurred and otherwise ensure that the SPE receives remittances from securitized utility tariff charges that are required to satisfy the total securitized revenue requirement, including without limitation any overcollections or undercollections caused by defaults, during the time since the last true-up; and
- (b) ensure the billing of securitized utility tariff charges necessary to generate the collection of amounts sufficient to timely provide all payments of scheduled principal and interest (or deposits to sinking funds in respect of principal and interest) and any other amounts due in connection with the securitized utility tariff bonds (including ongoing financing costs and amounts required to be deposited in or allocated to any collection account or subaccount) during the period for which such adjusted securitized utility tariff charges are to be in effect.

The servicer will make true-up adjustment filings with the Commission annually, and if the servicer forecasts undercollections semi-annually.

206. True-up filings will be incorporated into the next recovery period based upon the cumulative differences, regardless of the reason, between the total securitized revenue requirement (including scheduled principal of and interest payments on the securitized utility tariff bonds) designed to be recovered during the current recovery period and the amount of securitized utility tariff charge remittances to the indenture trustee received during the current recovery period from application of the current rate then in effect. To ensure adequate securitized utility tariff charge revenues to fund the total

securitized revenue requirement and to avoid overcollections and undercollections over time, some required data contemplated to be actual may be projected or forecasted as of the time of filing the tariff (including projections of uncollectible securitized utility tariff charges; projections of payment lags between the billing and collection of the securitized utility tariff charges; and forecast retail sales for the recovery period). To the extent projected or forecasted data is used in calculating the securitized utility tariff charges, such projections and forecasts will be reconciled in future calculations of the securitized utility tariff charges through a true-up adjustment.

207. At the time of each true-up adjustment, the servicer will provide a new total securitized revenue requirement amount for the coming recovery period which shall incorporate any variations calculated through a reconciliation of the current recovery period new total securitized revenue requirement actuals to the projections, forecasts, or estimates to the extent that actuals are available. The servicer will provide its best available forecasted sales for the coming recovery period, and all supporting information. The true-up amount will be included in the calculation of the total securitized revenue requirement applicable to the next recovery period.

Interim True-Up

208. In addition to annual true-up adjustments, the servicer (a) will make interim true-up adjustments semi-annually (or quarterly beginning 12 months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds) or (b) may make interim true-up adjustments at any time:

- (a) if the servicer forecasts that securitized utility tariff charge collections will be insufficient to make all scheduled payments of principal, interest, and

other amounts in respect of the securitized utility tariff bonds on a timely basis during the current or next succeeding payment period; or

- (b) to replenish any draws upon the capital subaccount.

Additional True-Up Provisions

209. Each true-up adjustment filing will be filed not less than 30 days before the billing cycle of the month in which the revised securitized utility tariff charge will be in effect. Each true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the securitized utility tariff charges. Within 30 days after receiving a true-up adjustment filing, the Commission will either approve the request or inform Evergy West of any mathematical or clerical errors in its calculation. If the Commission informs Evergy West of mathematical or clerical errors in its calculation, Evergy West will correct its error and refile its request. The time frames previously described in this paragraph will apply to a refiled request.

Lowest Securitized Utility Tariff Charges

210. The proposed transaction structure includes (but is not limited to):

- (a) the use of the SPE as issuer of the securitized utility tariff bonds, limiting the risks to securitized utility tariff bond holders of any adverse impact resulting from a bankruptcy proceeding of Evergy West or any other person;
- (b) the right to impose and collect securitized utility tariff charges that are nonbypassable and which must be trued-up at least annually, but may be trued-up more frequently to assure the timely payment of the debt service and other ongoing financing costs;

- (c) additional collateral in the form of a collection account that includes a capital subaccount funded in cash in an amount equal to not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds and other subaccounts resulting in greater certainty of payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired federal income tax treatment for the securitized utility tariff bond transaction;
- (d) protection of securitized utility tariff bondholders against potential defaults by a servicer that is responsible for billing and collecting the securitized utility tariff charges from existing or future retail customers;
- (e) benefits for federal income tax purposes including (i) the transfer of the rights under this Financing Order to the SPE not resulting in gross income to Evergy West and the future revenues under the securitized utility tariff charges being included in Evergy West's gross income under its usual method of accounting, (ii) the issuance of the securitized utility tariff bonds and the transfer of the proceeds of the securitized utility tariff bonds to Evergy West not resulting in gross income to Evergy West, and (iii) the securitized utility tariff bonds constituting obligations of Evergy West; and
- (f) the securitized utility tariff bonds will be marketed using underwriting and marketing processes reviewed in consultation with the Finance Team, through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities,

and other aspects of the structuring, marketing and pricing, will be determined, evaluated and factored into the structuring, marketing and pricing of the securitized utility tariff bonds.

211. To ensure that customers receive the quantifiable net present value benefits due from the proposed securitization and so that the proposed securitized utility tariff bond transaction will be in accordance with the quantifiable net present value benefits test set forth in Section 393.1700.2.(3)(c), it is necessary that (i) the issuance advice letter demonstrates that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest; and will provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, (ii) the scheduled final payment of the last tranche of securitized utility tariff bonds will not exceed 15 years (although the legal final maturity of the securitized utility tariff bonds may extend to 17 years) and (iii) Evergy West otherwise satisfies the requirements of this Financing Order.

D) Use of Proceeds

212. Upon the issuance of securitized utility tariff bonds, the SPE will use the net proceeds from the sale of the securitized utility tariff bonds (after payment of up-front financing costs) to pay Evergy West the purchase price of the securitized utility tariff property. Evergy West will use the proceeds from the sale of the securitized utility tariff property to recover the qualified extraordinary costs incurred by Evergy West in connection with the anomalous weather event Winter Storm Uri approved herein.

213. SPP has issued resettlements in the months of June, August, and December 2021 after the winter weather event. Eversource West will continue to track and adjust the amount that is ultimately requested to be financed in this proceeding as a result any other resettlements or adjustments that may occur, and will report these to the Commission on a monthly basis, provided, however, nothing may impact the amount of securitized utility tariff bonds or the securitized utility tariff charges.

V. Conclusions of Law

The Commission makes the following conclusions of law.

WW. Eversource West is an electrical corporation, as defined in Section 393.1700.1(6).

XX. Eversource Missouri West is entitled to file a petition for a financing order under Section 393.1700.

YY. The Commission has jurisdiction and authority over Eversource West's petition under Section 393.1700.2.

ZZ. The Commission has authority to approve this Financing Order under Section 393.1700.2.

AAA. Notice of Eversource West's petition was provided in compliance with Section 393.1700.2.(3)(a)b.

BBB. The Securitization Law permits an electrical corporation request a Commission order authorizing it to finance securitized utility tariff costs, including its qualified extraordinary costs.

CCC. Qualified extraordinary costs are defined in Section 393.1700.1.(13) to include costs incurred prudently before, on, or after August 28, 2021, of an extraordinary

nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events. Securitized utility tariff costs are defined Section 393.1700.1.(17) to include either energy transition costs or qualified extraordinary costs, as the case may be. Financing costs are defined in Section 393.1700.1.(8) to include: (i) interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds; (ii) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds; (iii) any other cost related to issuing supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order; (iv) any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized utility tariff charges or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued; (v) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including Commission assessment fees,

whether paid, payable, or accrued; and (vi) any costs associated with performance of the Commission's responsibilities under the Securitization Law in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the Commission and paid pursuant to the Securitization Law.

DDD. The SPE constitutes an assignee of Eversource West as defined in Section 393.1700.1.(2) when an interest in the securitized utility tariff property created under this Financing Order is transferred to SPE.

EEE. The holders of the securitized utility tariff bonds and the indenture trustee will each be a financing party as defined in Section 393.1700.1.(10).

FFF. The SPE may issue securitized utility tariff bonds in accordance with this Financing Order.

GGG. The issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges approved in this Financing Order satisfies the requirements of Sections 393.1700.2.(3)(c)a., b. and c. mandating that (1) the amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and the recovery of such costs is just and reasonable and in the public interest; (2) the proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds; and (3) the proposed structuring and pricing of

the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

HHH. Eversource West is permitted to earn a return, at the cost of capital authorized hereunder, but no more, on any moneys advanced by Eversource West to fund reserves, if any, or capital accounts established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds. Eversource West shall account for any investment earnings on funds in such capital accounts in a future reconciliation pursuant to Section 393.1700.2.(3)(c)l.

III. This Financing Order adequately describes the amount of financing costs that Eversource West may recover through securitized utility tariff charges and specifies the period over which Eversource West may recover securitized utility tariff charges and financing costs in accordance with the requirements of Section 393.1700.2.(3)(c)a.

JJJ. The method approved in this Financing Order for allocating the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)h.

KKK. As provided in Section 393.1700.2(3)(f), at the time the securitized utility tariff property is transferred from Eversource West to the SPE, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized herein, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in this Financing Order.

LLL. As provided in Section 393.1700.2.(3)(d), the securitized utility tariff property identified herein will become securitized utility tariff property under the Securitization Law when it is sold to the SPE.

MMM. (a) All rights and interests of Evergy West under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized in this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds that are sold to the SPE under the securitized utility tariff property sale agreement, will be securitized utility tariff property within the meaning of Section 393.1700.1.(18), are assignable and will become securitized utility tariff property when they are first transferred to SPE.

NNN. Upon its sale to the SPE, the securitized utility tariff property specified in this Financing Order will constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of securitized utility tariff charges depends on Evergy West performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity consumption, as provided by Section 393.1700.5.(1)(a). The securitized utility tariff property will exist (a) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected; and (b) notwithstanding the fact that

the value or amount of the property is dependent on the future provision of service to customers by the electrical corporation or its successors or assignees and the future consumption of electricity by customers.

OOO. The securitized utility tariff property specified in this Financing Order will continue to exist until the securitized utility tariff bonds issued pursuant to this Financing Order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full as provided in Section 393.1700.5.(1)(b).

PPP. Upon the transfer by Evergy West of securitized utility tariff property to the SPE, the SPE will have all of the rights, title, and interest of Evergy West with respect to such securitized utility tariff property, including the right to impose, bill, charge, collect, and receive the securitized utility tariff charges authorized by this Financing Order.

QQQ. The securitized utility tariff bonds issued under this Financing Order will be securitized utility tariff bonds within the meaning of Section 393.1700.1.(15), and the securitized utility tariff bonds and holders thereof will be entitled to all of the protections provided under Section 393.1700.11.

RRR. Amounts that are authorized by this Financing Order or the tariffs approved hereby are securitized utility tariff charges as defined in Section 393.1700.1.(16), and the amounts collected from retail customers with respect to such securitized utility tariff charges are securitized utility tariff charges as defined in Section 393.1700.1.(16).

SSS. As provided in Section 393.1700.5.(1)(e), the interests of SPE and the indenture trustee in the securitized utility tariff property and in the revenues and collections arising from the securitized utility tariff property will not be subject to setoff, counterclaim, surcharge, or defense by Evergy West or any other person or in connection

with the reorganization, bankruptcy, or other insolvency of Evergy West or any other entity.

TTT. The methodology approved in this Financing Order to true-up the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)e.

UUU. Upon the sale from Evergy West to the SPE of the securitized utility tariff property, the servicer will be able to recover the securitized utility tariff charges associated with such securitized utility tariff property only for the benefit of the SPE in accordance with the servicing agreement.

VVV. As provided in Section 393.1700.3.(5), Evergy West retains sole discretion regarding whether to cause the securitized utility tariff bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Evergy West may abandon the issuance of securitized utility tariff bonds under this Financing Order by filing with the Commission a statement of abandonment and the reasons therefor.

WWW. The sale of the securitized utility tariff property from Evergy West to the SPE will be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, Evergy West's right, title, and interest in, to, and under the securitized utility tariff property if the sale agreement governing such sale expressly states that the sale is a sale or other absolute transfer in accordance with Sections 393.1700.5.(3)(a) and (b). Upon the sale in accordance with the previous sentence, the characterization of the sale as an absolute transfer and true sale and the corresponding characterization of the property interest of the SPE will not be affected or impaired by the occurrence of (a) the commingling of securitized utility tariff charges with other amounts; (b) the retention by Evergy West of (i) a partial or residual interest, including an equity

interest, in the securitized utility tariff property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of securitized utility tariff charges; (c) any recourse that the SPE may have against Evergy West; (d) any indemnification rights, obligations, or repurchase rights made or provided by Evergy West; (e) the obligation of Evergy West to collect securitized utility tariff charges on behalf of the SPE; (f) Evergy West acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the electrical corporation, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with the SPE or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the securitized utility tariff charges for the benefit and account of the SPE or such financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (g) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (h) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by Evergy West or its affiliates with respect to such securitized utility tariff bonds; or (i) any application of the formula-based true-up mechanism, in accordance with Section 393.1700.5.(3)(b).

XXX. As provided in Section 393.1700.5.(2)(b), a valid and binding security interest in the securitized utility tariff property in favor of the indenture trustee will be created at the later of the time this Financing Order is issued, the indenture is executed and delivered by the SPE granting such security interest, the SPE has rights in the securitized utility tariff property or the power to transfer rights in the securitized utility tariff

property, or value is received for the securitized utility tariff property. Upon the filing of a financing statement with the office of the secretary of state as provided in the Securitization Law, a security interest in securitized utility tariff property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest in accordance with Section 393.1700.5.(2)(c). Without limiting the foregoing, upon such filing a security interest in securitized utility tariff property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Securitization Law.

YYY. As provided in Section 393.1700.5.(3)(c), the transfer of an interest in securitized utility tariff property to SPE will be perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with Section 393.1700.7.

ZZZ. As priority of the sale perfected under Section 393.1700.5. will not be impaired by any later modification of this Financing Order or securitized utility tariff property or by the commingling of funds arising from securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under Section 393.1700.5., is terminated when they are transferred to a segregated account for the SPE or a financing party. Any proceeds of the securitized utility tariff property shall be held in trust for the SPE.

AAAA.As provided in Section 393.1700.5.(2)(f), if a default occurs under the securitized utility tariff bonds that are securitized by the securitized utility tariff property,

the indenture trustee may exercise the rights and remedies available to a secured party under the Missouri Uniform Commercial Code, including the rights and remedies available under part 6 of article 9 of the Missouri Uniform Commercial Code, and (a) the Commission may order that amounts arising from the related securitized utility tariff charges be transferred to a separate account for the indenture trustee's benefit, to which their lien and security interest may apply and (b) on application by the indenture trustee, the district court of Jackson County, Missouri, will order the sequestration and payment to the indenture trustee of revenues arising from the securitized utility tariff charges.

BBBB.As provided in Section 393.1700.5(2)(f), if a default occurs under the securitized utility tariff bonds, on application by or on behalf of the financing parties, a district court of Jackson County, Missouri, must order the sequestration and payment to those parties of revenues arising from the securitized utility tariff charges. As provided by Section 393.1700.9., (a) neither the State of Missouri nor its political subdivisions are liable on the securitized utility tariff bonds approved under this Financing Order, and the securitized utility tariff bonds are not a debt or a general obligation of the State of Missouri or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State of Missouri or any agency or political subdivision and (b) the issuance of securitized utility tariff bonds approved under this Financing Order does not, directly, indirectly, or contingently, obligate the State of Missouri or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the securitized utility tariff bonds, other than in their capacity as consumers of electricity.

CCCC. Under Section 393.1700.11.(1), the State of Missouri and its agencies, including the Commission, have pledged for the benefit and protection of bondholders, the owners of the securitized utility tariff property, other financing parties and Everbay West, that the State and its agencies will not (a) alter the provisions of the Securitization Law, (b) take or permit any action that impairs or would impair the value of securitized utility tariff property or the security for the securitized utility tariff bonds or revises the securitized utility tariff costs for which recovery is authorized, (c) in any way impair the rights and remedies of the bondholders, assignees, and other financing parties or (d) except for changes made pursuant to the true-up mechanism authorized under this Financing Order, reduce, alter, or impair securitized utility tariff charges until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the securitized utility tariff bonds have been paid and performed in full. The SPE is authorized under Section 393.1700.11.(2) and this Financing Order to include this pledge in the securitized utility tariff bonds and related documents. The pledge does not preclude limitation or alteration if full compensation is made by law for the full protection of the securitized utility tariff charges collected pursuant to this Financing Order and of the bondholders and any assignee or financing party entering into a contract with Everbay West.

DDDD. This Financing Order will remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger or sale of Everbay West, its successors, or assignees.

EEEE. Pursuant to Section 393.1700.2.(3)(a)c., this Financing Order is subject to judicial review only in accordance with Sections 386.500 and 386.510.

FFFF. This Financing Order meets the requirements for a financing order under Section 393.1700.

Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

Approval

1. **Approval of Petition.** The petition of Evergy West for the issuance of a financing order under Sections 393.1700 are approved, subject to the conditions and criteria provided in this Financing Order.

2. **Authority to Securitize.** Evergy West is authorized in accordance with this Financing Order to finance and to cause the issuance of securitized utility tariff bonds with a principal amount equal to the sum of (a) the securitizable balance at the time the securitized utility tariff bonds are issued *plus* (b) up-front financing costs, which includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability as in accordance with ordering paragraph 23, (iv) rating agency fees, (v) United States Securities and Exchange Commission registration fees, and (vi) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the structuring, marketing and pricing of the securitized utility tariff bonds and the issuance advice letter process (including any costs of the Commission's designated representatives, financial advisors and other advisors (including outside bond counsel)). The securitizable balance as of any given date is equal to the balance of qualified

extraordinary costs plus carrying costs accruing at a 5.06 percent long-term debt rate through the date the securitized utility tariff bonds are issued. If the actual up-front financing costs are less than the up-front financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the amount of such unused funds (together with interest, if any, earned from the investment of such funds) will be returned to customers in a general rate proceeding. If the actual up-front financing costs are more than the up-front financing costs included in the aggregate principal amount of the securitized utility tariff bonds, Eversource West will have the right to be reimbursed for such prudently incurred excess amounts through the establishment of a regulatory asset.

3. **Recovery of Securitized Utility Tariff Costs.** Eversource West is authorized to recover \$307,811,246 of its qualified extraordinary costs related to Winter Storm Uri. The up-front financing costs are estimated to be \$6.0 million plus the cost of the Commission's advisors, which will be updated through the issuance advice process.

4. **Tracing Funds.** Eversource West's proposed method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property shall be used to trace such funds and to determine the identifiable cash proceeds of any securitized tariff property subject to this Financing Order under applicable law.

5. **Third Party Billing.** If the State of Missouri or this Commission decides to allow billing, collection, and remittance of the securitized utility tariff charges by a third-party supplier within Eversource West's service territory, such authentication will be consistent with the rating agencies' requirements necessary for the securitized utility tariff bonds to receive and maintain the targeted triple-A rating.

6. **Provision of Information.** Evergy West must take all necessary steps to ensure that the Commission and its designated representatives and their financial and other advisors are provided sufficient and timely information as provided in this Financing Order in order to fulfill their obligations under the Securitization Law and this Financing Order.

7. **Issuance Advice Letter.** Evergy West shall submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of commencement of marketing the securitized utility tariff bonds; provided that such draft issuance advice letter will be revised as necessary and re-submitted to the Finance Team if the expected date of commencement of marketing is delayed. With the agreement of the Finance Team, the actual date of the commencement of marketing may be a date other than the expected date. The Finance Team will review the draft issuance advice letter and provide timely feedback to Evergy West based on the progression of structuring and marketing of the securitized utility tariff bonds. Not later than one day after the pricing of the securitized utility tariff bonds and before issuance of the securitized utility tariff bonds, Evergy West shall provide the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as Appendix A to this Financing Order. Evergy West and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges will provide quantifiable net present value benefits to

customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring, marketing and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. The issuance advice letter must be completed, must evidence the actual dollar amount of the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued. The issuance advice letter will demonstrate the ultimate amounts of quantifiable net present value benefits. In addition, if more than de minimis original issue discount, credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that such original issue discount, credit enhancements, or other arrangements are reasonably expected to provide benefits as required by this Financing Order. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the issuance advice letter in Appendix A to this Financing Order and the Securitized Utility Tariff Rider. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with such letter. The Finance Team may request such revisions to the issuance advice letter as may be necessary to assure the accuracy of the calculations and information included and that the requirements of the Securitization Law and this Financing Order. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter will become effective on the date of issuance of the securitized utility tariff bonds (which must not occur before the fifth business day after pricing) unless

before noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

8. **Approval of Tariff.** The form of Securitized Utility Tariff Rider attached as Appendix B to this order is approved. Before the issuance of any securitized utility tariff bonds under this Financing Order, Evergy West must file compliance tariff sheets that conform to the form of the Securitized Utility Tariff Rider tariff provisions attached to this Financing Order, but with rate elements left blank. With its submission of the issuance advice letter, Evergy West shall also submit a compliance tariff sheet, bearing an effective date no earlier than five business days after its submission, containing the rate elements of the securitized utility tariff charge. That compliance tariff sheet shall become effective on the date the securitized utility tariff bonds are issued with no further action of the Commission unless the Commission issues a disapproval letter as described in Ordering Paragraph 7.

Securitized Utility Tariff Charges

9. **Imposition and Collection.** Evergy West is authorized to impose on and the servicer is authorized to collect from all existing and future retail customers²²⁵ located within Evergy West's service area as such service area exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized utility tariff charges in an amount sufficient to provide for the timely recovery

²²⁵ Excluding special contract customers as of August 28, 2021.

of the aggregate total securitized revenue requirements (including payment of principal of and interest on the securitized utility tariff bonds), as approved in this Financing Order.

10. **SPE's Rights and Remedies.** Upon the sale by Everbay West of the securitized utility tariff property to the SPE, the SPE will have all of the rights and interest of Everbay West with respect to such securitized utility tariff property, including, without limitation, the right to exercise any and all rights and remedies with respect thereto, including the right to authorize disconnection of electric service and to assess and collect any amounts payable by any retail customer in respect of the securitized utility tariff property.

11. **Collector of Securitized Utility Tariff Charges.** Everbay West or any subsequent servicer of the securitized utility tariff bonds shall bill a customer or other entity, which, under the terms of this Financing Order or the tariffs approved hereby, is required to bill or collect securitized utility tariff charges for the securitized utility tariff charges attributable to that customer.

12. **Collection Period.** The scheduled final payment date of securitized utility tariff bonds may not exceed 15 years and the legal final maturity of such tranche of the securitized utility tariff bonds may extend to 17 years.

13. **Allocation.** Everbay West shall allocate the securitized utility tariff charges in the manner described in this Financing Order.

14. **Nonbypassability.** Everbay West shall collect and remit the securitized utility tariff charges in accordance with this Financing Order.

15. **True-Ups.** Everbay West shall file true-up adjustments of the securitized utility tariff charges as described in this Financing Order.

16. **Ownership Notification.** The servicer shall ensure that each retail customer bill that includes the securitized utility tariff charge meets the notification of ownership and separate line item requirements set forth in this Financing Order.

Securitized Utility Tariff Bonds

17. **Issuance.** Evergy West is authorized to cause the SPE to issue one series of securitized utility tariff bonds as specified in this Financing Order. The securitized utility tariff bonds must be denominated in United States Dollars.

18. **Up-front Financing Costs.** Evergy West may finance up-front financing costs in accordance with the terms of this Financing Order, which provides that the total amount for up-front financing cost, which includes (i) underwriters' discounts and commissions, (ii) legal fees, (iii) auditor fees, (iv) structuring advisor fees, (v) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability as discussed in ordering paragraphs 7 and 23, (vi) information technology programming costs, (vii) rating agency fees, (viii) United States Securities and Exchange Commission registration fees, and (ix) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the structuring, marketing and pricing of the securitized utility tariff bonds and the issuance advice letter process (including any costs of the Commission's designated representatives, financial advisors and other advisors (including outside counsel)).

19. **Ongoing Financing Costs.** Evergy West may recover its actual ongoing financing costs through its securitized utility tariff charges set forth in Appendix C to this Financing Order. The amount of ongoing financing costs is subject to updating in the

issuance advice letter in consultation with the Finance Team to reflect a change in the size of the securitized utility tariff bond issuance and other information available at the time of filing the issuance advice letter. As provided in ordering paragraph 30, a servicer, other than Evergy West or its affiliates, may collect a servicing fee higher than that set forth in Appendix C to this Financing Order, if such higher fee is approved by the Commission and the indenture trustee and subject to rating agency conditions.

20. **Collateral.** All securitized utility tariff property and other collateral must be held and administered by the indenture trustee under the indenture as described in Evergy West's petition. The SPE must establish a collection account with the indenture trustee as described in finding of fact number [189]. Upon payment of the principal amount of all securitized utility tariff bonds authorized in this Financing Order and the discharge of all obligations in respect thereof, all amounts in the collection account, including investment earnings, must be released by the indenture trustee to the SPE for distribution in accordance with ordering paragraph 21.

21. **Distribution Following Repayment.** Following repayment of the securitized utility tariff bonds authorized in this Financing Order and release of the funds held by the indenture trustee, the servicer, on behalf of the SPE, must credit to retail customers, the final balance of the subaccounts (other than principal remaining in the capital subaccount), whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other financing costs have been paid. The SPE shall also credit to retail customers any subsequently collected securitized utility tariff charges.

22. **Funding of Capital Subaccount.** The capital contribution by Evergy West to be deposited into the capital subaccount shall be funded by Evergy West and not from the proceeds of the sale of securitized utility tariff bonds at an amount not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds and required by tax and rating agency requirements at the time of issuance determined in consultation with the Finance Team. Evergy West is authorized to receive a return on the capital contribution at a WACC of 8.9 percent. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount, will be released to the SPE for payment to Evergy West, with any investment earnings on funds in the capital account to be accounted for in a future reconciliation process under Section 393.1700.2.(3)(c)k.

23. **Original Issue Discount, Credit Enhancement.** Evergy West may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the securitized utility tariff bonds to the extent permitted by and subject to the terms of this Financing Order only if Evergy West certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Finance Team. Except for a de minimis amount of original issue discount, any decision to use such arrangements to enhance credit or promote marketability must be made in consultation with the Finance Team. Evergy West may not enter into an interest rate swap, currency hedge, or interest rate hedging arrangement. This ordering

paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

24. **Recovery Period.** The Commission authorizes Evergy West to recover the securitized utility tariff costs and financing costs over a period not to exceed 17 years from the date the securitized utility tariff bonds are issued, although this does not prohibit recovery of securitized utility tariff charges for service rendered during the 17-year period but not actually collected until after the 17-year period.

25. **Amortization Schedule.** The securitized utility tariff bonds shall be structured to provide a securitized utility tariff charge that is based on substantially levelized annual revenue requirements over the expected life of the securitized utility tariff bonds and allocated on the basis of loss-adjusted energy sales, subject to modification in accordance with this Financing Order.

26. **Finance Team Participation in Bond Issuance.** The Commission, acting through its Finance Team, may participate with Evergy West in discussions regarding the structuring, marketing and pricing of the securitized utility tariff bonds. The Finance Team has the right to provide input to Evergy West and collaborate with Evergy West in all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Evergy West and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting;

(7) bond maturities; (8) reporting templates; (9) the amount of any capital contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The Finance Team's review will begin immediately following this Financing Order becoming non-appealable and will continue until the issuance advice letter becomes effective. The Finance Team will not have authority to direct how Evergy West places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings, participate in all calls, emails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds. The Commission retains authority over enforcing the terms of this Financing Order, and the Finance Team' process may petition the Commission for relief for any actual or threatened violation of the terms of the Financing Order.

27. **Use of the SPE.** Evergy West must use the SPE, a bankruptcy-remote special purpose entity, to issue the securitized utility tariff bonds authorized under this Financing Order. The SPE must be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions and to avoid the possibility that Evergy West would have to extend funds to the SPE in a manner that could jeopardize the bankruptcy remoteness of SPE.

Servicing

28. **Servicing Agreement.** The Commission authorizes Evergy West to enter into the servicing agreement with the SPE and to perform the servicing duties approved in this Financing Order. Without limiting the foregoing, in its capacity as initial servicer of the securitized utility tariff property, Evergy West is authorized to calculate, impose, bill,

charge, collect and receive for the account of the SPE, the securitized utility tariff charges authorized in this Financing Order, as adjusted from time to time to meet the total securitized revenue requirements as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-up adjustments described in this Financing Order. The servicer is entitled to collect servicing fees in accordance with the provisions of the servicing agreement; *provided* that the annual servicing fee payable to Evergy West while it is serving as servicer (or to any other servicer affiliated with Evergy West) must not at any time exceed 0.05 percent of the original principal amount of the securitized utility tariff bonds. The annual servicing fee payable to any servicer not affiliated with Evergy West must not at any time exceed 0.60 percent of the original principal amount of the securitized utility tariff bonds unless such higher rate is approved by the Commission and the indenture trustee and subject to rating agency conditions under ordering paragraph 30.

29. **Administration Agreement.** The Commission authorizes Evergy West to enter into an administration agreement with the SPE to provide the services covered by the administration agreements. The fee charged by Evergy West as administrator under that agreement must not exceed \$50,000 per annum plus reimbursable third-party costs.

30. **Replacement of Evergy West as Servicer.** Upon the occurrence of a servicer termination event under the servicing agreement, the financing parties may replace Evergy West as the servicer in accordance with the terms of the servicing agreement. The servicing fee of the replacement servicer shall not exceed the applicable maximum servicing fee unless approved as specified in ordering paragraph 28, the

replacement servicer must not begin providing service until the date the Commission approves the appointment of such replacement servicer. No entity may replace Evergy West as the servicer in any of its servicing functions with respect to the securitized utility tariff charges and the securitized utility tariff property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded.

31. **Amendment of Agreements.** The parties to the servicing agreement, administration agreement, indenture, and securitized utility tariff property purchase and sale agreement may amend the terms of such agreements; *provided* that no amendment to any such agreement increases the ongoing financing costs without the approval of the Commission. Any amendment to any such agreement that may have the effect of increasing ongoing financing costs must be provided by the SPE to the Commission along with a statement as to the possible effect of the amendment on the ongoing financing costs.

32. **Collection Terms.** The servicer shall remit collections of the securitized utility tariff charges to the SPE or the indenture trustee for the SPE's account in accordance with the terms of the servicing agreement.

33. **Federal Securities Law Requirements.** Each other entity responsible for collecting securitized utility tariff charges from retail customers must furnish to the SPE or Evergy West or to any successor servicer information and documents necessary to enable the SPE or Evergy West or any successor servicer to comply with their respective disclosure and reporting requirements, if any, with respect to the securitized utility tariff bonds under federal securities laws.

Structure of the Securitization

34. **Structure.** Eversource West shall structure the issuance of the securitized utility tariff bonds and the imposition and collection of the securitized utility tariff charges as set forth in this Financing Order.

Use of Proceeds

35. **Use of Proceeds.** Upon the issuance of securitized utility tariff bonds, the SPE shall pay the net proceeds from the sale of the securitized utility tariff bonds (after payment of up-front financing costs) to pay Eversource West the purchase price of the securitized utility tariff property. Eversource West shall use the proceeds from the sale of the securitized utility tariff property to recover the qualified extraordinary costs incurred by Eversource West in connection with the anomalous weather event Winter Storm Uri approved herein.

Miscellaneous Provisions

36. **Continuing Issuance Right.** In accordance with Section 393.1700.2(3)(c)n., Eversource West has the continuing irrevocable right to cause the issuance of securitized utility tariff bonds in one series in accordance with this Financing Order for a period commencing with the date of this Financing Order and extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, the effective period may be extended with the approval of the Commission's designated representatives to a date which is not less than 90 days after the date such disruption ends.

37. **Binding on Successors.** This Financing Order, together with the securitized utility tariff charges authorized in it, shall be binding on Eversource West and any successor to Eversource West that provides transmission and distribution service directly to retail customers in Eversource West's service area as it exists on the date of this Financing Order, any other entity that provides transmission or distribution services to retail customers within that service area, and any successor to such other entity. In this paragraph, a successor means any entity that succeeds to any interest or obligation of its predecessor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, consolidation, conversion, assignment, pledge or other security, by operation of law or otherwise.

38. **Flexibility.** Subject to compliance with the requirements of this Financing Order, Eversource West and the SPE are afforded flexibility in establishing the terms and conditions of the securitized utility tariff bonds, including the final structure of the SPE, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, interest rates, use of original issue discount, and other financing costs.

39. **Effectiveness of Order.** This Financing Order will become effective on November 27, 2022. However, no securitized utility tariff property is created hereunder, and Eversource West is not authorized to impose, collect, and receive securitized utility tariff charges until the securitized utility tariff property has been sold to the SPE in conjunction with the issuance of the securitized utility tariff bonds.

40. **Regulatory Approvals.** All regulatory approvals within the jurisdiction of the Commission that are necessary for the recovery of the approved securitized utility

tariff charges associated with the securitized utility tariff costs that are the subject of the petition and for all related transactions contemplated in the petition are granted

41. **Payment of Commission's Costs for Professional Services.** Evergy West shall pay all costs of the Commission in connection with the petition, this Financing Order and the proposed transaction, including, but not limited to, the Commission's outside attorneys' fees and the fees of any financial or other advisors from the proceeds of the securitized utility tariff bonds on the date of issuance as up-front financing costs.

42. **Effect.** This Financing Order constitutes a legal financing order for Evergy West under the Securitization Law. The Commission finds this Financing Order complies with the Securitization Law. A financing order gives rise to rights, interests, obligations, and duties as expressed in the Securitization Law. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Evergy West and the SPE are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the conditions and criteria established in this Financing Order.

43. **Rejection of the Stipulation.** The *Non-Unanimous Stipulation and Agreement* submitted by Evergy West, Staff, and Public Counsel on August 1, 2022, is rejected and the Commission does not adopt it as the resolution of any issue contained therein.

44. **All Other Motions Denied.** The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

45. This report and order shall become effective on November 27, 2022.



BY THE COMMISSION

Morris L Woodruff

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

FORM OF ISSUANCE ADVICE LETTER

_____ Day of _____ 2023
Case No. _____

MISSOURI PUBLIC SERVICE COMMISSION**SUBJECT: ISSUANCE ADVICE LETTER FOR SECURITIZED UTILITY TARIFF BONDS**

Pursuant to the Financing Order adopted in *Petition of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order*, Case No. _ (the “Financing Order”), EVERGY MISSOURI WEST, INC. D/B/A EVERGY MISSOURI WEST (“Petitioner”) hereby submits, no later than one day after the pricing date of the Securitized Utility Tariff Bonds, the information referenced below. This Issuance Advice Letter is for the 202[3] Securitized Utility Tariff Bonds, tranches A-1 through A-[__]. Any capitalized terms not defined in this letter have the meanings ascribed to them in the Financing Order.

PURPOSE

This filing establishes the following:

- (a) the total amount of Securitized Utility Tariff Costs and Financing Costs being financed;
- (b) the amounts of quantifiable net present value savings;
- (c) confirmation of compliance with issuance standards;
- (d) the actual terms and structure of the Securitized Utility Tariff Bonds being issued;
- (e) the initial Securitized Utility Tariff Charge for retail customers; and
- (f) the identification of the Special Purpose Entity (SPE).

SECURITIZED UTILITY TARIFF COSTS AND FINANCING COSTS BEING FINANCED

The total amount of Securitized Utility Tariff Costs and Financing Costs being financed (the “Securitized Costs”) is presented in Attachment 1.

COMPLIANCE WITH ISSUANCE STANDARDS

The Financing Order requires Petitioner to confirm, using the methodology approved therein, that the actual terms of the Securitized Utility Tariff Bonds result in compliance with the standards set forth in the Financing Order. These standards are:

1. The financing of Qualified Extraordinary Costs and Financing Costs will provide quantifiable net present value benefits to retail customers, greater than would be achieved compared to the customary method of financing

with respect to the Qualified Extraordinary Costs in retail customer rates (See Attachment 2, Schedule D);

2. The Securitized Utility Tariff Bonds will be issued in one series comprised of one or more tranches having a scheduled final payment of years and legal final maturities not exceeding years from the date of issuance of such series (See Attachment 2, Schedule A);
3. The Securitized Utility Tariff Bonds may be issued with an original issue discount, additional credit enhancements, or arrangements to enhance marketability provided that the Petitioner certifies that the original issue discount, additional credit enhancements, or arrangements to enhance marketability will provide quantifiable net present value benefits greater than its cost; and
4. The structuring, marketing and pricing of the Securitized Utility Tariff Bonds is certified by the Petitioner to result in the lowest Securitized Utility Tariff Charges consistent with market conditions at the time the Securitized Utility Tariff Bonds were priced and the terms of the Financing Order.
5. The amount of [Securitized Utility Tariff Costs] to be financed using Securitized Utility Tariff Bonds are \$_.
6. The recovery of such Securitized Utility Tariff Costs is just and reasonable and in the public interest.
7. The estimate of the amount of Financing Costs that may be recovered through Securitized Utility Tariff Charges is \$_.
8. The period over which the Securitized Utility Tariff Costs and Financing Costs may be recovered is years.
9. Add other findings from Section 393.1700.2.(3)(c).

ACTUAL TERMS OF ISSUANCE

Securitized Utility Tariff Bonds: _____

Securitized Utility Tariff Bond Issuer: **[SPE]**

Trustee: _____

Closing Date: _____, 202[3]

Bond Ratings: [S&P AAA(sf), Moody's Aaa(sf)]

Amount Issued: \$ _____

Securitized Utility Tariff Bond Upfront Financing Costs: See Attachment 1, Schedule B.

Securitized Utility Tariff Bond Ongoing Financing Costs: See Attachment 2, Schedule B.

Tranche	Coupon Rate	Scheduled Final Payment	Legal Final Maturity
A-1	___ %	___	___

Effective Annual Weighted Average Interest Rate of the Securitized Utility Tariff Bonds:	[___]%
Life of the Securitized Utility Tariff Bonds:	_____ Years
Weighted Average Life of the Securitized Utility Tariff Bonds:	_____ Years
Call provisions (including premium, if any):	N/A
Target Amortization Schedule:	Attachment 2, Schedule A
Scheduled Final Payment Dates:	Attachment 2, Schedule A
Legal Final Maturity Dates:	Attachment 2, Schedule A
Payments to Investors:	Semi-annually Beginning _____, 20__
Initial annual Servicing Fee as a percent of original Securitized Utility Tariff Bond principal balance:	[0.05]%

INITIAL SECURITIZED UTILITY TARIFF CHARGE

Table I below shows the current assumptions for each of the variables used in the calculation of the initial Securitized Utility Tariff Charges.

TABLE I	
Input Values For Initial Securitized Utility Tariff Charges	
Applicable period: from _____ to _____	
Forecasted retail kWh/kW sales for the applicable period:	\$ _____
Securitized Utility Tariff Bond debt service for the applicable period	\$ _____
Percent of billed amounts expected to be charged-off:	\$ _____
Forecasted % of Billing Paid in the Applicable Period:	\$ _____
Forecasted retail kWh/kW sales billed and collected for the applicable period.	\$ _____
Forecasted annual ongoing financing costs (excluding debt service):	\$ _____
Initial Securitized Utility Tariff Bond outstanding balance:	\$ _____
Target Securitized Utility Tariff Bond outstanding balance as of: _____ / ____ / ____:	\$ _____
Total Securitized Revenue Requirement for applicable period:	\$ _____

IDENTIFICATION OF SPE

The owner of the Securitized Utility Tariff Property will be: _____ [SPE].

EFFECTIVE DATE

In accordance with the Financing Order, the Securitized Utility Tariff Charge shall be automatically effective upon the Petitioner's receipt of payment in the amount of \$ _____ from [SPE], following Petitioner's execution and delivery to [SPE] of the Bill of Sale transferring Petitioner's rights and interests under the Financing Order and other rights and interests that will become Securitized Utility Tariff Property upon transfer to [SPE] as described in the Financing Order.

NOTICE

Copies of this filing are being furnished to the parties on the attached service list. Notice to the public is hereby given by filing and keeping this filing open for public inspection at Petitioner's corporate headquarters.

AUTHORIZED OFFICER

The undersigned is an officer of Petitioner and authorized to deliver this Issuance Advice Letter on behalf of Petitioner.

Respectfully submitted,

EVERGY MISSOURI WEST, INC. D/B/A
EVERGY MISSOURI WEST

By: _____
Name: _____
Title: _____

ATTACHMENT 1
SCHEDULE A
CALCULATION OF SECURITIZED UTILITY TARIFF COSTS
AND FINANCING COSTS

Securitized Utility Tariff Costs to be financed: \$_____

Upfront Financing Costs \$_____

TOTAL COSTS TO BE FINANCED \$_____

ATTACHMENT 1
SCHEDULE B
ESTIMATED UPFRONT FINANCING COSTS

UP-FRONT FINANCING COSTS	
Legal Fees (Company, Issuer, Trustee, and Underwriter)	\$ _____
Underwriters' Fees	\$ _____
Auditor's Fee	\$ _____
Structuring Advisor's Fee	\$ _____
Information Technology Programming Costs	\$ _____
Costs of the Commission	\$ _____
Original Issue Discount	\$ _____
SEC Registration Fee	\$ _____
SEC Registration Fee	\$ _____
Bond Rating Fees	\$ _____
Miscellaneous	\$ _____
TOTAL UP-FRONT FINANCING COSTS FINANCED	\$ _____

Note: Differences that result from the Estimated Up-front Financing Costs financed being more or less than the Actual Upfront Financing Costs incurred will be resolved through the process described in the Financing Order.

<u>ATTACHMENT 2</u> <u>SCHEDULE A</u>
SECURITIZED UTILITY TARIFF BOND REVENUE REQUIREMENT INFORMATION

TRANCHE				
Payment Date	Principal Balance	Interest	Principal	Total Payment
	\$_____			
_____	_____	\$_____	\$_____	\$_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ATTACHMENT 2
SCHEDULE B
ONGOING FINANCING COSTS

	ANNUAL AMOUNT
Servicing Fee (Evergy Missouri West as Servicer) (0.05% of initial Securitized Utility Tariff Bond principal amount)	\$ _____
Administration Fee	\$ _____
Trustee's/Trustee's Counsel Fees and Expenses	\$ _____
Auditing/Accounting Fees	\$ _____
Legal Fees/Expenses	\$ _____
Rating Agency Surveillance Fees	\$ _____
Return on Capital Account	\$ _____
Printing/Edgarizing Fees	\$ _____
Independent Director's or Manager's Fees	\$ _____
Miscellaneous	\$ _____
TOTAL ONGOING FINANCING COSTS (with Evergy Missouri West as Servicer)	\$ _____
Ongoing Servicers Fee (Third Party as Servicer) (0.60% of principal amount)	\$ _____
TOTAL ONGOING FINANCING COSTS (Third Party as Servicer)	\$ _____

Note: The amounts shown for each category of operating expense on these attachments are the expected expenses for the first year of the Securitized Utility Tariff Bonds. Securitized Utility Tariff Charges will be adjusted at least annually to reflect any changes in Ongoing Financing Costs through the true-up process described in the Financing Order.

ATTACHMENT 2
SCHEDULE C
CALCULATION OF SECURITIZED UTILITY TARIFF CHARGES

Year	Securitized Utility Tariff Bond Payments¹	Ongoing Costs²	Total Nominal Securitized Utility Tariff Charge Requirement³	Present Value of Securitized Utility Tariff Charges⁴
1	\$ _____	\$ _____	\$ _____	\$ _____
2	\$ _____	\$ _____	\$ _____	\$ _____
3	\$ _____	\$ _____	\$ _____	\$ _____
4	\$ _____	\$ _____	\$ _____	\$ _____
5	\$ _____	\$ _____	\$ _____	\$ _____
6	\$ _____	\$ _____	\$ _____	\$ _____
7	\$ _____	\$ _____	\$ _____	\$ _____
8	\$ _____	\$ _____	\$ _____	\$ _____
9	\$ _____	\$ _____	\$ _____	\$ _____
10	\$ _____	\$ _____	\$ _____	\$ _____
11	\$ _____	\$ _____	\$ _____	\$ _____
12	\$ _____	\$ _____	\$ _____	\$ _____
13	\$ _____	\$ _____	\$ _____	\$ _____
14	\$ _____	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____	\$ _____

¹ From Attachment 2, Schedule A.

² From Attachment 2, Schedule B.

³ Sum of Securitized Utility Tariff Bond payments and ongoing costs.

⁴ Calculated in accordance with the methodology cited in the Financing Order.

ATTACHMENT 2
SCHEDULE D
COMPLIANCE WITH SECTION 393.1700

Quantifiable Benefits Test:⁵

	Securitization	FAC/PISA 20 years	Amortization: 15 Years
Storm Uri costs (incl. carrying)	\$[•]	\$[•]	\$[•]
Up-front financing costs	\$[•]		-
Total	\$[•]	\$[•]	\$[•]
Carrying cost	[•]%	[•]%	[•]%
Term (years)	[•]	[•]	[•]
Monthly payment	\$[•]		
Ongoing costs (monthly)	\$[•]		\$[•]
Monthly revenue requirement	\$[•]	\$[•]	\$[•]
Total payments/Collected	\$[•]	\$[•]	\$[•]
Securitization benefit		\$[•]	\$[•]
Discount Rate (5.06%)	[•]%	[•]%	[•]%
NPV payments discounted @ Discount Rate	\$[•]	\$[•]	\$[•]
NPV securitization benefit		\$[•]	\$[•]

⁵ Calculated in accordance with the methodology cited in the Financing Order.

P.S.C. MO. No. _____

Revised Sheet No. _____

Canceling P.S.C. MO. No. _____

Original Sheet No. _____

For Missouri Retail Service

**SECURITIZED UTILITY TARIFF
RIDER****APPLICABILITY**

The Securitized Utility Tariff Rider is a non-bypassable charge paid by all existing or future retail customers receiving electrical service from an electrical corporation or its successors or assignees under Commission-approved rate schedules (except for customers receiving electrical service under special contracts on August 28, 2021), even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in Missouri.

The Securitized Utility Tariff Rider will be applicable to customers newly served by the Company due to organic growth within its existing service territory or expansion of the Company's service territory by way of a new certificate of convenience and necessity or a new territorial agreement. The Securitized Utility Tariff Rider will not apply to customers in other utility jurisdictions merged with, or acquired by, the Company in the future. This charge will continue to be applicable to any customers (new or existing) currently served by the Company, but subsequently served by some other electric service provider as a result of a territorial agreement or modification of a territorial agreement, whether the other electric service provider is regulated by this Commission or exempted from regulation by this Commission by any current or future law. In such instance applicable kWh shall be included in all applicable calculations contained herein.

The Securitized Utility Tariff Rider is applicable to energy consumed under the Company's various rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021. Charges pursuant to this Schedule SUR shall be presented on each customer's bill as a separate line item including the rate applicable to each kWh and the amount of the total charge. Schedule SUR shall remain applicable to each kWh for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, and any necessary true-ups have been made.

Schedule SUR was authorized in Case No. EF-2022-0155, The Petition of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order Authorizing the Financing of Qualified Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds. A Special Purpose Entity ("SPE"), or its successors or assignees, as applicable, is the owner of the securitized utility tariff property which includes all rights to impose, bill, charge, collect, and receive the relevant Securitized Utility Tariff Charge and to obtain periodic adjustment to such charges. Company, as servicer or other third-party servicer, shall act as SPE's collection agent for the relevant Securitized Utility Tariff Charge, separate and apart from the other rates, riders, and charges specified in this Tariff.

Issued:

Issued by: Darrin R. Ives, Vice President

Effective:

1200 Main, Kansas City, MO 64105

P.S.C. MO. No. _____

Revised Sheet No. _____

Canceling P.S.C. MO. No. _____

Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF RIDER

APPLICABILITY (continued)

Rates under this Schedule SUR will be adjusted no less frequently than annually in order to ensure that the expected collection of amounts authorized in Case No. EF-2022-0155 is adequate to pay when due, pursuant to the expected amortization schedule, principal and interest on the bonds and pay on a timely basis other financing costs. Schedule SUR rates shall be calculated by dividing the total securitized revenue requirement by the forecasted period projected sales at generation voltage and multiplied by the voltage expansion factor, as shown in the following formula:

$$SURR_x = ((TSRR + CA_{RP} + \text{True-Up Amount}_{\text{NextRP}}) \div S_{RP}) \times VAF_x$$

where,

$SURR$ = Schedule SUR Rate for the period, applicable to indicated VAF ;

$TSRR$ = Total Securitized Revenue Requirement shall consist of the following items:

1. Principal
2. Interest
3. [INSERT ADDITIONAL ITEMS AS DETAILED IN FINANCING ORDER PRIOR TO ISSUANCE OF BONDS], and
4. Bad debts net of prior period collections.
5. For each of the above, separately, any variations calculated through a reconciliation of the current period $TSRR$ actuals to the projections, forecasts, or estimates to the extent that actuals are available.

CA_{RP} = An allowance to the extent necessary to align revenue recovery with payment obligations. This allowance will be returned to ratepayers when no longer necessary;

S_{RP} = Forecasted recovery period retail sales to all applicable customers, at the generation level;

VAF_x = Expansion factor by voltage level¹

VAF_{Trans} = Expansion factor for transmission voltage customers

VAF_{Sub} = Expansion factor for substation to transmission voltage

customers VAF_{Prim} = Expansion factor for primary to substation voltage

customers VAF_{Sec} = Expansion factor for lower than primary voltage customers

¹In the event more delineated voltage adjustments become implemented in the Fuel Adjustment Clause, such service levels shall be incorporated into this rider at the next true-up.

Issued:

Issued by: Darrin R. Ives, Vice President

Effective:

1200 Main, Kansas City, MO 64105

P.S.C. MO. No. _____

Revised Sheet No. _____

Canceling P.S.C. MO. No. _____

Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF RIDER
--

RECOVERY PERIODS

“Recovery Period” (RP) means the period for which a given SURR tariff sheet is in effect. The initial Recovery Period shall begin on the effective date of the first tariff providing an effective SURR, and conclude the day prior to the next occurring [Insert the first calendar day of 2 months 6 months apart to optimize operation in conjunction with payment dates]. Subsequent RPs will occur until all TSRR has been paid in full.

RPs will generally begin [INDICATED DATES], unless required to accommodate a True-Up, and will be 12 months in duration unless required to accommodate a True-Up. If an RP is less than 12 months in duration the Recovery Period Amount and related calculations shall be prorated accordingly.

To accommodate timing of SURR tariff sheet filings, some required data contemplated to be actual may be projected as of the time of filing. To the extent projected data for one or more months is used to calculate subsequent SURRs, in subsequent SURR filings such projections will be reconciled against actual data as it becomes available.

TRUE-UP

The Company as servicer shall file proposed SURR tariff sheets implementing a True-Up and bearing a 30-day effective date, no less frequently than annually. At the servicer’s discretion, SURR tariff sheet filings implementing a True-Up may be made semi-annually, or more frequently, by tariff filing bearing a 30-day effective date. All supporting materials shall be included in such filings. Workpapers and necessary documentation supporting each element of the TSRR shall be included under affidavit with each SURR tariff sheet filing. If cost to Evergy to perform its servicing and administrative services under the Servicing Agreement and the Administration Agreement is less than what the Company is paid for those services, then that difference in cost shall be tracked by Evergy and included in a regulatory liability account to be addressed in Evergy’s next general rate case.

The Company shall time the tariff filing such that the effective date of the tariff is the first day of a calendar month.

SURR tariff sheet filings implementing a True-Up and incorporating revised SURRs calculations shall be made quarterly beginning twelve months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds.

Issued:
Issued by: Darrin R. Ives, Vice President

Effective:
1200 Main, Kansas City, MO 64105

P.S.C. MO. No. _____

Revised Sheet No. _____

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Original Sheet No. _____

For Missouri Retail Service

**SECURITIZED UTILITY TARIFF
RIDER**
TRUE-UP AND SURR TARIFF SHEET FILING FORMULA

$$\text{True-Up Amount}_{\text{NextRP}} = \text{Periodic Payment Requirement}_{\text{CurrentRP}} - \text{SUTC}$$

Remittances_{CurrentRP} Where;

Periodic Payment Requirement = The portion of the TSRR used to calculate the current SURRs applicable to the current RP.

SUTC Remittances = The SUR revenue received or projected to be received during the current RP resulting from the application of current SURR.

To accommodate timing of SURR tariff sheet filings, some required data contemplated to be actual may be projected as of the time of filing. To the extent projected data for one or more months is used to calculate subsequent SURRs, in subsequent SURR filings such projections will be reconciled against actual data as it becomes available.

At the time of each True-Up, the servicer will provide a new TSRR amount for the coming RP which shall incorporate any variations calculated through a reconciliation of the current period TSRR actuals to the projections, forecasts, or estimates to the extent that actuals are available. The Company will provide its best available S_{RP} forecast, and all supporting information.

To accommodate RPs of varying lengths and true-up of projected data, S_{RP} forecasts by calendar month relied upon for SURR tariff sheet calculation shall be provided to Staff and retained by the Company.

Issued:

Issued by: Darrin R. Ives, Vice President

Effective:

1200 Main, Kansas City, MO 64105

P.S.C. MO. No. _____

Revised Sheet No. _____

Canceling P.S.C. MO. No. _____

Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF RIDER
--

ADDITIONAL TERMS

1. Treatment of partial payments on customer bills – the first dollars collected would be attributed to past due balances, if any. To the extent that a customer remits an amount less than the full amount due for a given prior or current period, the charges under Schedule SUR shall be prorated with other amounts due for that given prior or current period bill.
2. Treatment for Net Metering Rates – For customers subject to billing under the Net-metering Easy Connection Act (Act), if the electricity supplied by the Company exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed to the applicable SURR for each kWh as netted pursuant to the terms of the Act and this tariff. If the electricity generated by the customer-generator exceeds the electricity generated by the customer-generator during a billing period, the customer shall not be issued a credit based on the SURR applicable to each kWh as netted pursuant to the terms of the Act and this tariff, nor shall the SURR be considered to be part of the avoided fuel cost of the Company for purposes of the Act. For customers who are authorized to back-flow energy under some other provision of law, or for any portion of back-flowed energy that exceeds that authorized under the terms of applicable net-metering provisions, the SURR shall be applicable to each kWh provided by the Company, without any offset.
3. Inapplicability of Discounts – Charges under Schedule SUR are payable in full and are not eligible for any discount.
4. Filing Procedure
Initial Rate Filing: In accordance with the provisions of sections 393.1700.2(3)(c)i and 393.1700.2(3)(h), prior to the issuance of bonds, the Company shall submit to the Commission, no later than one business day after the pricing of the securitized utility tariff bonds, an issuance advice letter and revised Schedule SUR tariff bearing a proposed effective date being the date the securitized utility tariff bonds are to be issued. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the Commission may require. The Company may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after receipt of the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

For all filings - On or before each filing, the Company shall prepare and file under affidavit the workpapers and supporting documentation supporting the Total Securitized Revenue Requirement and SUR Rates being filed, ensuring that all SUR Rates in effect for a current period are published at all times bills are rendered for service at that rate, and an SUR Rate is not applied to usage that occurred prior to the effective date of the SUR Rate.

Issued:
 Issued by: Darrin R. Ives, Vice President

Effective:
 1200 Main, Kansas City, MO 64105

P.S.C. MO. No. _____

Revised Sheet No. _____

Canceling P.S.C. MO. No. _____

Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF RIDER

SECURITIZED REVENUE REQUIREMENT AND SUR RATE

These rates shall apply to the Billing Months on and after [NAME OF CALENDAR MONTH FOLLOWING SHEET EFFECTIVE DATE].

EXAMPLE LINE NAMES AND AMOUNTS

[AFTER INITIAL FILING, ALTERNATE BETWEEN TWO SHEETS TO MAINTAIN

PRESENCE IN TARIFF OF EFFECTIVE RATES DURING OVERLAP MONTH]

1	Principal and Interest		\$33,483,107
2	Prior Securitized Revenue Requirement True-Up Amount	+	\$0
3	Other Financing Costs	+	\$0
4	Total Securitized Revenue Requirement	=	\$33,483,107
5	Forecasted Sales at Generation Level (SRP) for December 2021 through November 2021	÷	8,848,730,509
6	SUR Rate	=	\$0.00378
Loss Adjusted SUR Rates			
7	Secondary (SUR Rate x VAF _{Sec} 1.0426) per kWh	=	\$0.00395
8	Primary (SUR Rate x VAF _{Prim} 1.0268) per kWh	=	\$0.00389
9	Substation (SUR Rate x VAF _{Sub} 1.0133) per kWh	=	\$0.00383
10	Transmission (SUR Rate x VAF _{Trans} 1.0100) per kWh	=	\$0.00382

Issued:

Issued by: Darrin R. Ives, Vice President

Effective:

1200 Main, Kansas City, MO 64105

ESTIMATED UPFRONT FINANCING COSTS

UPFRONT FINANCING COSTS	
Legal Fees (Company, Issuer, Trustee, and Underwriter)	\$ 3,025,000
Auditor's Fee	\$ 1,000,000
Structuring Advisor Fee	\$ 200,000
Information Technology Programming Costs	\$ 70,000
Costs of the Commission	\$ TBD
Original Issue Discount	\$ TBD
Underwriters' Fees	0.40%
SEC Registration Fees	0.00920%
Bond Rating Fees	0.1325%
Miscellaneous	\$ 90,000
TOTAL UPFRONT FINANCING COSTS FINANCED	\$ 6,025,312

ESTIMATED ONGOING FINANCING COSTS

	ANNUAL AMOUNT
Servicing Fee (Evergy Missouri West as Servicer) (0.05% of initial Securitized Utility Tariff Bond principal amount)	0.05%
Administration Fee	\$ 75,000
Trustee's/Trustee's Counsel Fees and Expenses	\$ 5,000
Auditing/Accounting Fees	\$ 75,000
Legal Fees/Expenses	\$ 35,000
Rating Agency Surveillance Fees	\$ 45,000
Return on Capital Account	0.34%
Printing/Edgarizing Fees	\$ 10,000
Independent Manager's Fees	\$ TBD
Miscellaneous	\$ 10,000
TOTAL ONGOING FINANCING COSTS (with Evergy Missouri West as Servicer)	\$ 508,905
Ongoing Servicers Fee (Third Party as Servicer) (0.60% of principal amount)	\$ 0.60%
TOTAL ONGOING FINANCING COSTS (Third Party as Servicer)	\$ 2,174,340

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of Spire	)	
Missouri Inc. d/b/a Spire, for a Certificate	)	
of Convenience and Necessity to	)	
Construct, Install, Own, Operate, Maintain,	)	<u>File No. GA-2024-0100</u>
and Otherwise Control and Manage a	)	
Natural Gas Distribution System in Cass	)	
County, Missouri as an Expansion of its	)	
Existing Certificated Areas	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§34. Public convenience and necessity or public benefit

§43. Gas

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§43. Gas

The Commission approved a gas distribution utility's application to expand its service area in Cass County, Missouri.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.

GAS**§3. Certificate of convenience and necessity**

The Commission approved a gas distribution utility's application to expand its service area in Cass County, Missouri.

§3. Certificate of convenience and necessity

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at the
Commission's office in
Jefferson City on the 21st day
of December, 2023.

In the Matter of the Application of Spire)
Missouri Inc. d/b/a Spire, for a Certificate)
of Convenience and Necessity to)
Construct, Install, Own, Operate, Maintain,)
and Otherwise Control and Manage a)
Natural Gas Distribution System in Cass)
County, Missouri as an Expansion of its)
Existing Certificated Areas)

File No. GA-2024-0100

**ORDER GRANTING CERTIFICATE
OF CONVENIENCE AND NECESSITY**

Issue Date: December 21, 2023

Effective Date: January 20, 2024

On September 22, 2023,¹ Spire Missouri, Inc., d/b/a Spire, filed an application with the Commission seeking a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Cass County, Missouri, as a further expansion of its existing certificated area. The application also included a request to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1). The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

On December 7, the Staff of the Commission (Staff) filed a recommendation that a CCN should be granted for the service area described in the application, subject to

¹ Unless otherwise noted, all date references are to the year 2023.

certain conditions. Staff also agreed with Spire's position that good cause exists to waive the 60-day notice requirement. Spire has not filed a response regarding Staff's recommended conditions.

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary.²

The Commission may grant a gas corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."³ The Commission articulated criteria to be used when evaluating applications for CCNs in *In Re Intercon Gas, Inc.*⁴

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria (often referred to as the Tartan Factors):⁵ (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

Natural gas service is not currently offered by another unregulated or regulated entity in the proposed service area. The developer of a subdivision contacted Spire about

² *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

³ Section 393.170.3, RSMo.

⁴ 30 Mo P.S.C. (N.S.) 554, 561 (1991).

⁵ See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

extending Spire's natural gas distribution system in order to serve 50 lots for homes in the subdivision.⁶ Thus, there is a need for the service.

Spire is qualified to provide the service, as it already provides gas service to customers in the City of St. Louis and 41 counties throughout the state of Missouri.⁷ Spire has the financial ability to provide the service, as the project would be completed using internal funds and a contribution in aid of construction provided by the developer. There would be no changes in Spire's financial ratios and capital structure due to this CCN. Moreover, the proposed total cost of the project is less than 0.1% of Spire's annual capital expenditure average.⁸

Staff analyzed the impact of the proposed addition of assets on the revenue requirement based on the revenue requirement determined in Commission File No. GR-2022-0179 and concluded that the additional revenue requirement increase is immaterial and will not become a detriment to existing customers.⁹ In response to a Staff data request, Spire provided an economic model for rate revenues for 50 residential customers in a three-year scenario. Staff analyzed the model and concluded that the project appears economically feasible.¹⁰

The Commission finds that Spire's application promotes the public interest by serving an area where no other natural gas providers currently serve and in which service

⁶ *Application for Certificate of Convenience and Necessity for Cass County and Request for Waiver*, p. 3 (filed September 22).

⁷ *Application for Certificate of Convenience and Necessity for Cass County and Request for Waiver*, p. 2 (filed September 22).

⁸ *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 4 (filed December 7).

⁹ *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 3 (filed December 7).

¹⁰ *Staff Recommendation for Approval of Certificate of Convenience and Necessity*, Appendix A, p. 3 (filed December 7).

was requested of Spire by the developer of the proposed service area, who is providing a contribution in aid of construction.

Based on the application and Staff's recommendation, the Commission concludes that the factors for granting a certificate of convenience and necessity have been satisfied. The Commission further finds Spire's provision of gas service to the area, as described in its application and subject to the conditions recommended by Staff, and not objected to by Spire, is necessary and convenient for the public service. Thus, the Commission will grant Spire a CCN to provide gas service within the area set out in the application, subject to the conditions recommended by Staff.

The Commission will grant Spire's request for waiver of the 60-day case filing notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on Spire's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

THE COMMISSION ORDERS THAT:

1. Spire is granted a certificate of convenience and necessity (CCN), subject to the conditions set out below, to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service for the area in Cass County, Missouri described in its application as Sections 24-25, Township 46 North, Range 32 West of Cass County and Section 30, Township 46 North, Range 31 West of Cass County.
2. Spire's CCN is subject to the following conditions:
 - a. Spire shall file an updated tariff sheet incorporating the additional certificated area granted by this CCN.

- b. All rate making determinations regarding the revenue requirement impact of the extension of the service area granted by this CCN are reserved until Spire's next general rate making proceeding.
3. The 60-day notice of case filing requirement is waived for this application pursuant to 20 CSR 4240-4.017(1)(D).
4. This order shall become effective on January 20, 2024.

BY THE COMMISSION



A handwritten signature in cursive script, reading "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier
and Hahn CC., concur.

Seyer, Regulatory Law Judge

STATE OF MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of	)	
Confluence Rivers Utility Operating	)	
Company, Inc., for a Certificate of	)	<u>File No. SA-2024-0129</u>
Convenience and Necessity to Provide	)	
Sewer Service in an Area of Jefferson	)	
County, Missouri (Country Life Acres)	)	

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

§21.1. Public interest

§47. Sewers

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

§22. Restrictions and conditions

§47. Sewers

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§34. Public convenience and necessity or public benefit

§47. Sewers

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in Jefferson County, Missouri.

PUBLIC UTILITIES**§13. Acquisition of public utility property**

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§13. Acquisition of public utility property

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

§13. Acquisition of public utility property

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SEWER**§2. Certificate of convenience and necessity**

The Commission approved a sewer utility's application to expand its service area in Jefferson County, Missouri.

§2. Certificate of convenience and necessity

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of December, 2023.

In the Matter of the Application of)
Confluence Rivers Utility Operating)
Company, Inc., for a Certificate of)
Convenience and Necessity to Provide)
Sewer Service in an Area of Jefferson)
County, Missouri (Country Life Acres))

File No. SA-2024-0129

**ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: December 21, 2023

Effective Date: December 31, 2023

Background

On September 29, 2023,¹ Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application requesting that the Commission approve the acquisition of the Country Life Acres² sewer system, and also grant Confluence Rivers a Certificate of Convenience and Necessity (CCN) regarding the Country Life Acres sewer system in Jefferson County, Missouri. The Commission does not currently regulate the Country Life Acres sewer system.

Country Life Acres currently charges \$144 per year (or \$12 per month) for sewer service. Confluence Rivers proposed to adopt the existing rates of Country Life Acres until such time as the rates are modified according to law.

¹ All dates refer to 2023 unless otherwise indicated.

² Kathy Kriska d/b/a Country Life Acres #2 Trustees has an active fictitious name registration with the Missouri Secretary of State.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications to intervene were received. On October 5, Confluence Rivers amended its application. The originally filed Appendix C and Appendix D lacked certainty as to the number of homes in the service area. Confluence Rivers worked with Staff and filed a revised legal description of the service area and a revised service area map - respectively Amended Appendix C and Amended Appendix D.

On December 5, the Staff of the Commission (Staff) filed its Recommendation with an attached Memorandum. Staff stated that Confluence Rivers' application for the issuance of a CCN meets the necessary and convenient for the public service standard, and the transfer of assets would not be detrimental to the public interest. Staff recommended approval of the application subject to 17³ recommended conditions.

On December 14, Confluence Rivers filed its response to Staff's recommendation. Confluence Rivers stated that it accepted all of Staff's recommended conditions, but proposed an extension of time with respect to proposed conditions 16 and 17, which state, in pertinent part, that Confluence "repair the connection between the first and second lagoon cells and remove sludge from the septic tank within the first month of ownership" and "upgrade the treatment system as necessary to achieve compliance with wastewater treatment facility permit discharge limits within 24 months of ownership[.]" Confluence Rivers proposed extending the above timelines to three months and 30 months, respectively. Confluence Rivers' response stated that Staff did not oppose the additional time.

³ Lettered a-q in ordered paragraph 3 below.

No other responses or objections to the application or to Staff's Recommendation were received.⁴ No party requested a hearing. The requirement for a hearing is met when the opportunity for a hearing has been provided.⁵ Thus, the Commission will rule on the application as amended.

Discussion

Confluence Rivers is a certificated and regulated water and sewer utility providing service to customers in Missouri. Central States Water Resources, LLC is the parent company of Confluence Rivers. Confluence Rivers provides water service to approximately 5,200 customers and sewer service to approximately 5,200 customers across several counties.

Country Life Acres provides sewer services to approximately 15 residential connections (single family homes) in Jefferson County, Missouri. There is no other same or similar sewer service available in the area. The wastewater system is a lagoon treatment facility consisting of gravity collection flowing to a septic tank, which is pumped to a two-cell facultative lagoon with chlorine disinfection. Sludge is retained in the lagoon. The facility is regulated by the Missouri Department of Natural Resources. The application stated that the facility will likely require significant process improvements to achieve consistent compliance with permitted limits.

Staff's Memorandum stated that the Country Life Acres sewer system is under enforcement action from the Missouri Department of Natural Resources due to repeated exceedances of effluent limits for ammonia. The existing treatment technology at Country

⁴ Commission Rule 20 CSR 4240-2.080(13).

⁵ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Life Acres was not designed to comply with modern permit limits, and the current owners have failed to upgrade the system. Staff further stated it is in agreement with details provided in the application regarding the facility's demonstrated inability to consistently meet discharge limits that include Biochemical Oxygen Demand (BOD), E. Coli, Ammonia and Total Suspended Solids (TSS).

Certificate of Convenience and Necessity

Section 393.170, RSMo (Supp. 2022), in subsection 2, requires Confluence Rivers to have a CCN, which is granted by the Commission prior to providing sewer service in Country Life Acres service area. Subsection 393.170.3, RSMo, requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.⁶ It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.⁷ Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

- (1) there must be a need for the service;
- (2) the applicant must be qualified to provide the proposed service;

⁶ *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).

⁷ *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

- (3) the applicant must have the financial ability to provide the service;
- (4) the applicant's proposal must be economically feasible; and
- (5) the service must promote the public interest.⁸

These criteria are known as the Tartan Factors.⁹

There is a need for the service as the customers of Country Life Acres are already receiving sewer service and will continue to need that service. Additionally, there is a need to repair and upgrade the system, and Confluence Rivers is qualified to provide the service as it is an existing sewer utility subject to the Commission's jurisdiction. Confluence Rivers has the financial ability to acquire the system, as no external financing is needed and Confluence Rivers has demonstrated historically that it has adequate resources to operate utility systems it owns via access to capital from its parent company. The proposed transaction is economically feasible due to its being financially feasible, as well as Confluence Rivers' demonstrated ability to successfully operate other similarly situated small sewer systems in the state of Missouri, its feasibility study provided in its application and other information provided to Staff regarding feasibility, the purchase price for the assets, and Confluence Rivers' ability to draw resources from its parent company. The proposal promotes the public interest as the Country Life Acres sewer system is under enforcement action from the Missouri Department of Natural Resources and is in need of repairs and upgrades. Confluence Rivers has demonstrated the ability to provide safe and adequate service, which also supports a finding of promotion of the public interest.

⁸ *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

⁹ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Based on the application as amended, Staff's Recommendation and Memorandum and proposed conditions, and Confluence Rivers' response, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide sewer service to the customers currently served by the Country Life Acres sewer system. Further, the Commission finds that Confluence Rivers possesses, with the assistance of its parent company, adequate technical, managerial, and financial capacity to operate the sewer system. The Commission further finds that the transfer of assets via purchase would not be detrimental to the public interest. Thus, the Commission will authorize the transfer of assets and grant Confluence Rivers the CCN to provide sewer service within the proposed service area, subject to the conditions described by Staff as amended by the timeline modifications proposed by Confluence Rivers.

Rates

Confluence Rivers proposes to charge a flat rate of \$12.00 per month for sewer service, which is the current rate being charged by Country Life Acres. The Commission finds that the proposed rates and rules of operation are just and reasonable. The Commission will direct Confluence Rivers to file new or amend its current tariffs, setting out the rates and rules for the Country Life Acres customers.

Waiver of 60-day notice rule

Confluence Rivers also sought a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Confluence Rivers verified that it had no communication with the office of the Commission regarding any substantive issue likely

to be in this case during the preceding 150 days. The Commission finds good cause to waive the notice requirement.

So that Confluence Rivers may address the repairs and improvements as soon as possible, the Commission finds it is reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers' request for waiver from the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D) is granted.

2. Confluence Rivers is granted authority to acquire all or substantially all of the sewer utility assets of Country Life Acres as described in the application as amended.

3. Upon closing, Confluence Rivers is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system in the areas currently served by the Country Life Acres, subject to Staff's recommended conditions with Confluence Rivers' modified repair timelines, as follows:

- a) For the approved service area, Confluence Rivers' shall apply a monthly charge of \$12.00 for sewer service, and shall adopt the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13, until such time the new tariff book is approved by the Commission in Confluence Rivers' recent rate case, File No. WR-2023-0006;
- b) Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges;
- c) Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;
- d) If closing on the sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this 30-day period regarding the status of closing, and

additional status reports within five days after each additional 30-day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;

- e) If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its sewer tariff, and rate and charges sheets applicable to customers in the service area in the sewer tariff;
- f) Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA);
- g) Confluence Rivers shall adhere to the acquisition accounting guidance provided in the USOA so that a request for rate recovery can be properly audited in Confluence Rivers' next rate case;
- h) Confluence Rivers shall utilize the sewer depreciation rates in Exhibit A of the *Unanimous Partial Stipulation and Agreement* filed in Confluence Rivers' rate case, File No. WR-2023-0006, which was approved by the Commission on September 27, 2023;
- i) Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area;
- j) Confluence Rivers shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets;
- k) Confluence Rivers shall provide to the Commission's Customer Experience Department (CXD) Staff an example of its actual communication with the Country Life Acres customers regarding its acquisition and operations of the sewer, and how customers may reach Confluence Rivers by phone, within ten days after closing on the assets;

- l) Confluence Rivers shall include Country Life Acres customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
 - m) Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first three month's billing for the acquired company within ten days of the billings;
 - n) Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for the acquired company within ten days after such communications and notifications;
 - o) Confluence Rivers shall repair the connection between the first and second lagoon cells and remove sludge from the septic tank within the first three months of ownership;
 - p) Confluence Rivers shall upgrade the treatment system as necessary to achieve compliance with wastewater treatment facility permit discharge limits within 30 months of ownership; and,
 - q) Confluence Rivers shall file notice in this file, File No. SA-2024-0129, once conditions a-p above have been completed.
4. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service in the Country Life Acres service area.
5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

6. This order shall become effective on December 31, 2023.



BY THE COMMISSION

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Hatcher, Senior Regulatory Law Judge.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

Timothy Allegri,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2024-0015</u>
	)	
Every Metro, Inc. d/b/a Every Missouri	)	
Metro and Every Missouri West, Inc. d/b/a	)	
Every Missouri West,	)	
Respondent	)	

**ORDER DENYING COMPLAINANT’S MOTION TO PURSUE AN
INJUNCTION**

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§24. Procedures, evidence and proof

In denying a motion for its general counsel to seek an injunction to stay eminent domain proceedings in circuit court, the Commission found that it cannot seek an injunction unless there is a violation or imminent violation of law subject to Commission jurisdiction.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day
of December, 2023.

Timothy Allegri,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Evergy Metro, Inc. d/b/a Evergy Missouri	)	
Metro and Evergy Missouri West, Inc. d/b/a	)	
Evergy Missouri West,	)	
Respondent	)	

File No. EC-2024-0015

**ORDER DENYING COMPLAINANT’S MOTION TO PURSUE AN
INJUNCTION**

Issue Date: December 21, 2023

Effective Date: December 21, 2023

On December 17, 2023, Timothy Allegri, Complainant, filed a motion for an injunction and a request for expedited treatment. Complainant’s motion asks that the Commission seek to stay court proceedings until the Commission issues its Report and Order in this complaint. Several other complainants filed pleadings supporting Mr. Allegri’s motion. This is Complainant’s second request for the Commission to direct its General Counsel to seek a temporary injunction of the eminent domain proceedings, staying the circuit court proceedings until this complaint case is resolved.

In support of its request, Complainant states that Evergy Missouri West’s alleged improper use of its certificate of convenience and necessity (CCN), and disregard for Section 227.050 RSMo., and Missouri Court Rule 86.04¹ concerning petition contents are

¹ Complainant cites Missouri Court Rule 86.05, but that rule refers to summons and service.

reasons for the Commission to request an injunction before the Circuit Courts of Johnson and Lafayette Counties. Complainant further states that an injunction would eliminate the possibility of Missouri landowners losing more valuable highway frontage land, and Evergy Missouri West being allowed to gain easements through possible abuse of its CCN and the eminent domain process.

Applicable Law

The Commission has jurisdiction to hear complaints under Section 386.390.1, RSMo, which provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission.

Section 386.360 RSMo., authorizes the Commission to direct its General Counsel to seek injunctive relief. Section 386.360.1 RSMo., provides that whenever the Commission believes a public utility is “failing or omitting or about to fail or omit to do anything required of it by law or by order or decision of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done...” in violation of a law subject to the Commission’s jurisdiction or of any order or decision of the Commission, it shall direct the General Counsel to commence an action in circuit court for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Discussion

Complainant requests the Commission order its General Counsel to request an injunction to halt or stay the eminent domain proceedings pending the resolution of this complaint case. The Commission has no authority to stay a circuit court proceeding. The

Commission, through its General Counsel, may request an injunction from the circuit court.

Complainant cites that Evergy Missouri West has not filed engineering or project plans with the Commission. However, “Commission” as used in Section 227.050 RSMo., refers to the Missouri Highways and Transportation Commission and not the Missouri Public Service Commission.

Likewise, Missouri Court Rule 86.04, concerning petitions in Condemnation Proceedings, concerns what is required in condemnation petitions before the circuit court and not the Missouri Public Service Commission.

Whether Evergy Missouri West’s plans exceed the authority granted it under its CCN is an appropriate matter for a complaint hearing. The complaint case is to determine if Evergy Missouri West’s plans would violate its CCN.

The Commission denied the Staff of the Commission’s previous request for the Commission to seek an injunction in this case. That order stated: “The Commission cannot seek an injunction where there is no violation or imminent violation of law subject to Commission jurisdiction, a Commission rule, or a Commission order. Additionally, Chapter 523 empowers the circuit court, and not the Commission, with authority over condemnation proceedings.” That same reasoning also applies to Complainant’s request for an injunction. The Commission has not yet determined if Evergy Missouri West’s plans violate the authority granted it in its CCN. Therefore, the Commission will deny Complainant’s motion.

THE COMMISSION ORDERS THAT:

1. Complainant's motion to have the Commission direct its General Counsel to seek an injunction in circuit court is denied.
2. This order is effective when issued.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeyer
and Hahn CC., concur.

Clark, Senior Regulatory Law Judge

DIGEST OF REPORTS
OF THE
PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

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ACCOUNTING

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- §2. Obligation of the utility**
- §3. Jurisdiction and powers of the Federal Commissions**
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- §5. Reports, records and statements**
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- §38. Taxes**
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- §39. Welfare and pensions
- §39.1. OPEBS, Postretirement benefits other than pensions
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- §41. Expenses generally
- §42. Accounting Authority orders
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ACCOUNTING

§2. Obligation of the utility

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

WR-2023-0006 **33 MPSC 3d 818**

§4. Jurisdiction and powers of the State Commission

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§4. Jurisdiction and powers of the State Commission

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 501**

§5. Reports, records and statements

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§8. Uniform accounts and rules

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

WR-2023-0006 **33 MPSC 3d 818**

§12. Capital account

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§12. Capital account

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 501**

§19. Fixed assets

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 501**

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 001**

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 025**

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 490**

§30. Purchase price or original cost

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 943**

§31. Acquisition of property expenses

In analyzing the recovery of certain transaction costs, the Commission relied on the underlying premise that founded the distinction of transaction costs versus transition costs – the net original cost rule. The rule states “Generally, transaction costs which do not benefit the ratepayer and are only costs of ownership are not recoverable from customers.”

WR-2023-0006 **33 MPSC 3d 818**

§38.1. Book/tax timing differences

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

WR-2023-0006 **33 MPSC 3d 818**

CERTIFICATES**I. IN GENERAL**

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- §2. Unauthorized operations and construction**
- §3. Obligation of the utility**

II. JURISDICTION AND POWERS

- §4. Jurisdiction and powers generally**

- §5. Jurisdiction and powers of Federal Commissions
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- §60. Revocation, cancellation and forfeiture generally
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CERTIFICATES**§6. Jurisdiction and powers of the State Commission**

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve

consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 730**

§6. Jurisdiction and powers of the State Commission

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

EA-2023-0017 **33 MPSC 3d 730**

§11. When a certificate is required generally

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

ER-2022-0337 **33 MPSC 3d 501**

§11. When a certificate is required generally

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 730**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

WA-2022-0311 **33 MPSC 3d 001**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0071 **33 MPSC 3d 025**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0092 **33 MPSC 3d 040**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0038 **33 MPSC 3d 132**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0110 **33 MPSC 3d 139**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0244 **33 MPSC 3d 294**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0187 **33 MPSC 3d 321**

§21. Grant or refusal of certificate generally

The Commission found the grant of a certificate of convenience and necessity to Evergy Missouri West with certain conditions was in the public interest.

EA-2022-0328 **33 MPSC 3d 328**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0328 **33 MPSC 3d 328**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0245 **33 MPSC 3d 368**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 490**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0226 **33 MPSC 3d 578**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 585**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0215 **33 MPSC 3d 597**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0389 **33 MPSC 3d 666**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0374 **33 MPSC 3d 684**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0017 **33 MPSC 3d 730**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0398 **33 MPSC 3d 809**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0437 **33 MPSC 3d 923**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0434 **33 MPSC 3d 943**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0441 **33 MPSC 3d 1159**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0450 **33 MPSC 3d 1187**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2024-0100 **33 MPSC 3d 1363**

§21. Grant or refusal of certificate generally

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2024-0129 **33 MPSC 3d 1370**

§21.1. Public interest

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

WA-2023-0092 **33 MPSC 3d 040**

§21.1. Public interest

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

GA-2023-0038 **33 MPSC 3d 132**

§21.1. Public interest

The Commission found the grant of a certificate of convenience and necessity to Evergy Missouri West with certain conditions was in the public interest.

EA-2022-0328 **33 MPSC 3d 328**

§21.1. Public interest

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

EA-2022-0245 **33 MPSC 3d 368**

§21.1. Public interest

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

EA-2023-0017 **33 MPSC 3d 730**

§21.1. Public interest

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

SA-2024-0129 **33 MPSC 3d 1370**

§21.4. Economic feasibility of proposed service

In granting a waiver of the feasibility study requirement, the Commission found that the assets in the requested service area were installed in 1997 and 2004 and that plans, specifications, or estimates were no longer available for the installed assets.

GA-2023-0441 **33 MPSC 3d 1159**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

WA-2023-0092 **33 MPSC 3d 040**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

GA-2023-0038 **33 MPSC 3d 132**

§22. Restrictions and conditions

The Commission found the grant of a certificate of convenience and necessity to Evergy Missouri West with certain conditions was in the public interest.

EA-2022-0328 **33 MPSC 3d 328**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2022-0328 **33 MPSC 3d 328**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2022-0245 **33 MPSC 3d 368**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2023-0215 **33 MPSC 3d 597**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2023-0017 **33 MPSC 3d 731**

§22. Restrictions and conditions

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2024-0129 **33 MPSC 3d 1370**

§34. Public convenience and necessity or public benefit

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service."

WA-2022-0311 **33 MPSC 3d 001**

§34. Public convenience and necessity or public benefit

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

WA-2023-0071 **33 MPSC 3d 025**

§34. Public convenience and necessity or public benefit

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough

to amount to a necessity.

WA-2023-0092 **33 MPSC 3d 040**

§34. Public convenience and necessity or public benefit

The Commission may grant a CCN to operate utility systems after determining that such operation is either “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0038 **33 MPSC 3d 132**

§34. Public convenience and necessity or public benefit

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

EA-2022-0244 **33 MPSC 3d 294**

§34. Public convenience and necessity or public benefit

The Commission is authorized to grant a sewer corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either “necessary or convenient for the public service.”

SA-2023-0187 **33 MPSC 3d 321**

§34. Public convenience and necessity or public benefit

The Commission is authorized to grant an electrical corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either “necessary or convenient for the public service.” The term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.

EA-2022-0328 **33 MPSC 3d 328**

§34. Public convenience and necessity or public benefit

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

EA-2022-0245 **33 MPSC 3d 368**

§34. Public convenience and necessity or public benefit

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EA-2023-0226 **33 MPSC 3d 578**

§34. Public convenience and necessity or public benefit

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 585**

§34. Public convenience and necessity or public benefit

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does

not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2023-0215 **33 MPSC 3d 597**

§34. Public convenience and necessity or public benefit

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0389 **33 MPSC 3d 666**

§34. Public convenience and necessity or public benefit

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

GA-2023-0374 **33 MPSC 3d 684**

§34. Public convenience and necessity or public benefit

When determining whether the project is necessary or convenient for the public service, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost."

EA-2023-0017 **33 MPSC 3d 731**

§34. Public convenience and necessity or public benefit

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are

“necessary or convenient for the public service.”

SA-2023-0437 **33 MPSC 3d 923**

§34. Public convenience and necessity or public benefit

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0434 **33 MPSC 3d 943**

§34. Public convenience and necessity or public benefit

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

GA-2023-0441 **33 MPSC 3d 1159**

§34. Public convenience and necessity or public benefit

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0450 **33 MPSC 3d 1187**

§34. Public convenience and necessity or public benefit

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

GA-2024-0100 **33 MPSC 3d 1363**

§34. Public convenience and necessity or public benefit

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather

that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2024-0129 **33 MPSC 3d 1370**

§42. Electric and power

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EA-2022-0244 **33 MPSC 3d 294**

§42. Electric and power

The Commission approved an electric utility's application to construct a renewable generation facility.

EA-2022-0244 **33 MPSC 3d 294**

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0328 **33 MPSC 3d 328**

§42. Electric and power

The Commission is authorized to grant an electrical corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service." The term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service

would be an improvement justifying its cost.

EA-2022-0328 **33 MPSC 3d 328**

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0245 **33 MPSC 3d 368**

§42. Electric and power

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

EA-2022-0245 **33 MPSC 3d 368**

§42. Electric and power

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

EA-2022-0245 **33 MPSC 3d 368**

§42. Electric and power

The Commission approved an electric utility's application for

a Certificate of Convenience and Necessity for a solar facility.

EA-2022-0245 **33 MPSC 3d 369**

§42. Electric and power

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

ER-2022-0337 **33 MPSC 3d 501**

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0226 **33 MPSC 3d 578**

§42. Electric and power

The Commission approved an electric utility's application to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard in Callaway County, Missouri.

EA-2023-0226 **33 MPSC 3d 578**

§42. Electric and power

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EA-2023-0226 **33 MPSC 3d 578**

§42. Electric and power

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 730**

§42. Electric and power

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

EA-2023-0017 **33 MPSC 3d 730**

§42. Electric and power

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0017 **33 MPSC 3d 730**

§42. Electric and power

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

EA-2023-0017 **33 MPSC 3d 730**

§42. Electric and power

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

EA-2023-0017 **33 MPSC 3d 730**

§42. Electric and power

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost.”

EA-2023-0017 **33 MPSC 3d 731**

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0038 **33 MPSC 3d 132**

§43. Gas

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

GA-2023-0038 **33 MPSC 3d 132**

§43. Gas

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0038 **33 MPSC 3d 132**

§43. Gas

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

GA-2023-0038 **33 MPSC 3d 133**

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0110 **33 MPSC 3d 139**

§43. Gas

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

GA-2023-0110 **33 MPSC 3d 139**

§43. Gas

The Commission has articulated specific criteria when

evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0244 **33 MPSC 3d 294**

§43. Gas

The Commission amended a previous grant of a certificate of convenience and necessity to incorporate a later-filed stipulation and agreement involving a second natural gas distribution company.

GA-2023-0110 **33 MPSC 3d 486**

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0389 **33 MPSC 3d 666**

§43. Gas

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public

occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0389 **33 MPSC 3d 666**

§43. Gas

The Commission approved Spire's request to expand its Certificate of Convenience and Necessity (CCN) to a natural gas distribution system in Cass County, Missouri.

GA-2023-0389 **33 MPSC 3d 666**

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0374 **33 MPSC 3d 684**

§43. Gas

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

GA-2023-0374 **33 MPSC 3d 684**

§43. Gas

The Commission approved a gas distribution utility's application to expand its service area in Johnson County, Missouri.

GA-2023-0374 **33 MPSC 3d 684**

§43. Gas

The Commission has articulated specific criteria when

evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0441 **33 MPSC 3d 1159**

§43. Gas

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

GA-2023-0441 **33 MPSC 3d 1159**

§43. Gas

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

GA-2023-0441 **33 MPSC 3d 1159**

§43. Gas

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2024-0100 **33 MPSC 3d 1363**

§43. Gas

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

GA-2024-0100 **33 MPSC 3d 1363**

§43. Gas

The Commission approved a gas distribution utility’s application to expand its service area in Cass County, Missouri.

GA-2024-0100 **33 MPSC 3d 1363**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2022-0311 **33 MPSC 3d 001**

§45. Water

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either “necessary or convenient for the public service.”

WA-2022-0311 **33 MPSC 3d 001**

§45. Water

The Commission approved a water and sewer utility’s application to expand its service area in Stewartsville,

Missouri.

WA-2022-0311 **33 MPSC 3d 001**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0071 **33 MPSC 3d 025**

§45. Water

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

WA-2023-0071 **33 MPSC 3d 025**

§45. Water

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

WA-2023-0071 **33 MPSC 3d 025**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal

must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0092 **33 MPSC 3d 040**

§45. Water

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

WA-2023-0092 **33 MPSC 3d 040**

§45. Water

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0092 **33 MPSC 3d 040**

§45. Water

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

WA-2023-0092 **33 MPSC 3d 041**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 490**

§45. Water

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

WA-2023-0345 **33 MPSC 3d 490**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 585**

§45. Water

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 585**

§45. Water

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

WA-2023-0284 **33 MPSC 3d 585**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0215 **33 MPSC 3d 597**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0398 **33 MPSC 3d 809**

§45. Water

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

WA-2023-0398 **33 MPSC 3d 809**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0434 **33 MPSC 3d 943**

§45. Water

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0434 **33 MPSC 3d 943**

§45. Water

The Commission approved a water and sewer utility’s application to expand its service area in the City of Ironton, Missouri.

WA-2023-0434 **33 MPSC 3d 943**

§45. Water

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0450 **33 MPSC 3d 1187**

§45. Water

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0450 **33 MPSC 3d 1187**

§45. Water

The Commission approved a water and sewer utility’s application to expand its service area in several areas in Missouri.

WA-2023-0450 **33 MPSC 3d 1187**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2022-0311 **33 MPSC 3d 001**

§47. Sewers

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either “necessary or convenient for the public service.”

WA-2022-0311 **33 MPSC 3d 001**

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in Stewartsville,

Missouri.

WA-2022-0311 **33 MPSC 3d 001**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0071 **33 MPSC 3d 025**

§47. Sewers

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

WA-2023-0071 **33 MPSC 3d 025**

§47. Sewers

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

WA-2023-0071 **33 MPSC 3d 025**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal

must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0092 **33 MPSC 3d 040**

§47. Sewers

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

WA-2023-0092 **33 MPSC 3d 040**

§47. Sewers

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0092 **33 MPSC 3d 040**

§47. Sewers

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

WA-2023-0092 **33 MPSC 3d 041**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the

Tartan Factors.

SA-2023-0187 **33 MPSC 3d 321**

§47. Sewers

The Commission is authorized to grant a sewer corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either “necessary or convenient for the public service.”

SA-2023-0187 **33 MPSC 3d 321**

§47. Sewers

The Commission approved a sewer utility’s application to expand its service area in Cass County, Missouri.

SA-2023-0187 **33 MPSC 3d 321**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 490**

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in the City of Wood Heights, Missouri.

WA-2023-0345 **33 MPSC 3d 490**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and

Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 585**

§47. Sewers

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 585**

§47. Sewers

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

WA-2023-0284 **33 MPSC 3d 585**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0215 **33 MPSC 3d 597**

§47. Sewers

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are “necessary or convenient for the public service.” The term “necessity” does not mean “essential” or “absolutely indispensable,” but rather that the proposed project “would be an improvement justifying its cost,” and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2023-0215 **33 MPSC 3d 597**

§47. Sewers

The Commission approved a sewer utility’s application to expand its service area in Ralls County, Missouri.

SA-2023-0215 **33 MPSC 3d 597**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0398 **33 MPSC 3d 809**

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in Lincoln County, Missouri.

WA-2023-0398 **33 MPSC 3d 809**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0437 **33 MPSC 3d 923**

§47. Sewers

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

SA-2023-0437 **33 MPSC 3d 923**

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in the Village of Luray, Missouri.

SA-2023-0437 **33 MPSC 3d 923**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0434 **33 MPSC 3d 943**

§47. Sewers

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0434 **33 MPSC 3d 943**

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in the City of Ironton, Missouri.

WA-2023-0434 **33 MPSC 3d 943**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0450 **33 MPSC 3d 1187**

§47. Sewers

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

WA-2023-0450 **33 MPSC 3d 1187**

§47. Sewers

The Commission approved a water and sewer utility’s application to expand its service area in several areas in

Missouri.

WA-2023-0450 **33 MPSC 3d 1187**

§47. Sewers

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2024-0129 **33 MPSC 3d 1370**

§47. Sewers

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

SA-2024-0129 **33 MPSC 3d 1370**

§47. Sewers

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2024-0129 **33 MPSC 3d 1370**

§47. Sewers

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough

to amount to a necessity.

SA-2024-0129 **33 MPSC 3d 1370**

§47. Sewers

The Commission approved a sewer utility's application to expand its service area in Jefferson County, Missouri.

SA-2024-0129 **33 MPSC 3d 1371**

DEPRECIATION

I. IN GENERAL

- §1. Generally**
- §2. Right to allowance for depreciation**
- §3. Reports, records and statements**
- §4. Obligation of the utility**

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally**
- §6. Jurisdiction and powers of the State Commission**
- §7. Jurisdiction and powers of the Federal Commission**
- §8. Jurisdiction and powers of local authorities**

III. BASIS FOR CALCULATION

- §9. Generally**
- §10. Cost or value**
- §11. Property subject to depreciation**
- §12. Methods of calculation**
- §13. Depreciation rates to be allowed**
- §14. Rates or charges for service**

IV. FACTORS AFFECTING ANNUAL ALLOWANCE

- §15. Factors affecting annual allowance generally**
- §16. Life of enterprise**
- §17. Life of property**
- §18. Past depreciation**
- §19. Charges to maintenance and other accounts**
- §20. Particular methods and theories**
- §21. Experience**
- §22. Life of property and salvage**
- §23. Sinking fund and straight line**
- §24. Combination of methods**

V. RESERVES

- §25. Necessity
- §26. Separation between plant units
- §27. Amount
- §28. Ownership of fund
- §29. Investment and use
- §30. Earnings on reserve

VI. DEPRECIATION OF PARTICULAR UTILITIES

- §31. Electric and power
- §32. Gas
- §33. Heating
- §34. Telecommunications
- §35. Water

DEPRECIATION**§3. Reports, records and statements**

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§6. Jurisdiction and powers of the State Commission

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§9. Generally

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and

dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 501**

§12. Methods of calculation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

WR-2023-0006 **33 MPSC 3d 818**

DISCRIMINATION

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Recovery of damages for discrimination
- §4. Recovery of discriminatory undercharge
- §5. Reports, records and statements

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the local authorities

III. RATES

- §9. Competitor's right to equal treatment
- §10. Free service
- §11. Inequality of rates
- §12. Methods of eliminating discrimination
- §13. Optional rates
- §14. Rebates
- §15. Service charge, meter rental or minimum charge
- §16. Special rates
- §17. Rates between localities
- §18. Concessions

IV. RATES BETWEEN CLASSES

- §19. Bases for classification and differences

- §20. Right of the utility to classify
- §21. Reasonableness of classification

V. RATES AND CHARGES OF PARTICULAR UTILITIES

- §22. Electric and power
- §23. Gas
- §24. Heating
- §25. Telecommunications
- §26. Sewer
- §27. Water

VI. SERVICE IN GENERAL

- §28. Service generally
- §29. Abandonment and discontinuance
- §30. Discrimination against competitor
- §31. Equipment, meters and instruments
- §32. Extensions
- §33. Preference during shortage of supply
- §34. Preferences to particular classes or persons

VII. SERVICE BY PARTICULAR UTILITIES

- §35. Electric and power
- §36. Gas
- §37. Heating
- §38. Sewer
- §39. Telecommunications
- §40. Water

DISCRIMINATION

No headnotes in this volume involved the question of Discrimination.

ELECTRIC

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §4. Transfer, lease and sale

- §4.1. Change of suppliers
- §5. Charters and franchise
- §6. Territorial agreements

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally
- §8. Jurisdiction and powers of Federal Commissions
- §9. Jurisdiction and powers of the State Commission
- §10. Jurisdiction and powers of the local authorities
- §11. Territorial agreements
- §12. Unregulated service agreements

III. OPERATIONS

- §13. Operations generally
- §13.1. Energy Efficiency
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return
- §24. Services generally
- §25. Competition
- §26. Valuation
- §27. Accounting
- §28. Apportionment
- §29. Rate of return
- §30. Construction
- §31. Equipment
- §32. Safety
- §33. Maintenance
- §34. Additions and betterments
- §35. Extensions
- §36. Local service
- §37. Liability for damage
- §38. Financing practices
- §39. Costs and expenses
- §40. Reports, records and statements
- §41. Billing practices
- §42. Planning and management
- §43. Accounting Authority orders
- §44. Safety
- §45. Decommissioning costs
- §45.1. Electric vehicle charging stations

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46.** Relations between connecting companies generally
 - §47.** Physical connection
 - §48.** Contracts
 - §48.1.** Qualifying facilities
 - §49.** Records and statements
-

ELECTRIC**§1. Generally**

The Commission opened a workshop file to receive input on an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC). Order No. 2222 amended FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators. The Commission had previously prohibited the operation of aggregations of retail customers (ARCs) in Missouri.

EW-2021-0267 **33 MPSC 3d 477**

§1. Generally

The Commission gave notice that the Lawrence Berkeley National Laboratory prepared a report, Regulation of Third-Party Aggregation in the (Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) Footprints, with particular focus on states within two regional transmission organizations, including Missouri. A copy of the report is filed in this docket.

EW-2021-0267 **33 MPSC 3d 477**

§1. Generally

Stakeholders requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric

utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers.

EW-2021-0267 **33 MPSC 3d 720**

§1. Generally

The Commission lifted a portion of a previously ordered prohibition against aggregators of retail customers (ARCs) to allow commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an ARC.

EW-2021-0267 **33 MPSC 3d 720**

§1. Generally

The Commission granted a variance where an absence of a large bank of Renewable Energy Credits (RECs) would require the utility to use RECs generated during the compliance year to meet the RES requirements. The rule at issue requires utilities to retire RECs within the compliance calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year.

EE-2024-0037 **33 MPSC 3d 931**

§1. Generally

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

EW-2021-0267 **33 MPSC 3d 1208**

§1. Generally

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the

Market Based Demand Response Program (MBDR).
EW-2021-0267 **33 MPSC 3d 1208**

§1. Generally

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1208**

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application to construct a renewable generation facility.

EA-2022-0244 **33 MPSC 3d 294**

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EA-2022-0244 **33 MPSC 3d 294**

§3. Certificate of convenience and necessity

The Commission is authorized to grant an electrical corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service." The term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost.

EA-2022-0328 **33 MPSC 3d 329**

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2022-0328 **33 MPSC 3d 329**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0328 **33 MPSC 3d 329**

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application for a Certificate of Convenience and Necessity for a solar facility.

EA-2022-0245 **33 MPSC 3d 369**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2022-0245 **33 MPSC 3d 369**

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity

(CCN).

EA-2022-0245 **33 MPSC 3d 369**

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2022-0245 **33 MPSC 3d 369**

§3. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

EA-2022-0245 **33 MPSC 3d 369**

§3. Certificate of convenience and necessity

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that rule includes "[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility's most recent rate case."

ER-2022-0337 **33 MPSC 3d 502**

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application to construct, install, own, operate, maintain, and otherwise control a 345 kV switchyard in Callaway County, Missouri.

EA-2023-0226 **33 MPSC 3d 578**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0226 **33 MPSC 3d 578**

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either “necessary or convenient for the public service.”

EA-2023-0226 **33 MPSC 3d 579**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0017 **33 MPSC 3d 731**

§3. Certificate of convenience and necessity

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its

cost.”

EA-2023-0017 **33 MPSC 3d 731**

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

EA-2023-0017 **33 MPSC 3d 731**

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN). Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.

EA-2023-0017 **33 MPSC 3d 731**

§3. Certificate of convenience and necessity

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

EA-2023-0017 **33 MPSC 3d 731**

§3. Certificate of convenience and necessity

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 731**

§4.1. Change of suppliers

The Commission dismissed an application to change electric suppliers where the applicant's application gave no basis for changing electric suppliers other than a rate differential.

EO-2024-0098 **33 MPSC 3d 1154**

§6. Territorial agreements

The Commission analyzed the seven factors set forth in Section 386.800.2, RSMo (Supp. 2022) to analyze a territorial agreement regarding the provision of electric service to an area not currently served within city limits.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§6. Territorial agreements

The Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§6. Territorial agreements

The Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no party requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§6. Territorial agreements

The Commission was not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the territorial agreement.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§6. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipal owned utilities and rural electric cooperatives.

EO-2023-0126 **33 MPSC 3d 166**

§6. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2023-0126 **33 MPSC 3d 166**

§6. Territorial agreements

An evidentiary hearing is required unless the territorial agreement is resolved between the parties; thus, the Commission found that it may make a determination without an evidentiary hearing.

EO-2023-0126 **33 MPSC 3d 166**

§6. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

EO-2023-0256 **33 MPSC 3d 469**

§6. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2023-0256 **33 MPSC 3d 469**

§6. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2023-0256 **33 MPSC 3d 469**

§6. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives.

EO-2023-0439 **33 MPSC 3d 696**

§6. Territorial agreements

The Commission may approve a territorial agreement's service area designation if the territorial agreement in total is not detrimental to the public interest.

EO-2023-0439 **33 MPSC 3d 696**

§6. Territorial agreements

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

EO-2023-0439 **33 MPSC 3d 696**

§6. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

EO-2024-0116 **33 MPSC 3d 935**

§6. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2024-0116 **33 MPSC 3d 935**

§6. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2024-0116 **33 MPSC 3d 935**

§6. Territorial agreements

The Commission has jurisdiction over territorial agreements and addendums between electrical corporations utilities and

rural electric cooperatives.

EO-2024-0144 **33 MPSC 3d 1196**

§6. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2024-0144 **33 MPSC 3d 1196**

§8. Jurisdiction and powers of the Federal Commissions

The Commission opened a workshop file to receive input on an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC). Order No. 2222 amended FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators. The Commission had previously prohibited the operation of aggregations of retail customers (ARCs) in Missouri.

EW-2021-0267 **33 MPSC 3d 477**

§8. Jurisdiction and powers of the Federal Commissions

The Commission gave notice that the Lawrence Berkeley National Laboratory prepared a report, Regulation of Third-Party Aggregation in the (Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) Footprints, with particular focus on states within two regional transmission organizations, including Missouri. A copy of the report is filed in this docket.

EW-2021-0267 **33 MPSC 3d 477**

§9. Jurisdiction and powers of the State Commission

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

EA-2022-0245 **33 MPSC 3d 369**

§9. Jurisdiction and powers of the State Commission

The Commission opened a workshop file to receive input on an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC). Order No. 2222 amended FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators. The Commission had previously prohibited the operation of aggregations of retail customers (ARCs) in Missouri.

EW-2021-0267 **33 MPSC 3d 477**

§9. Jurisdiction and powers of the State Commission

The Commission gave notice that the Lawrence Berkeley National Laboratory prepared a report, Regulation of Third-Party Aggregation in the (Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) Footprints, with particular focus on states within two regional transmission organizations, including Missouri. A copy of the report is filed in this docket.

EW-2021-0267 **33 MPSC 3d 477**

§9. Jurisdiction and powers of the State Commission

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 502**

§9. Jurisdiction and powers of the State Commission

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in

determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 502**

§9. Jurisdiction and powers of the State Commission

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

ER-2022-0337 **33 MPSC 3d 502**

§9. Jurisdiction and powers of the State Commission

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

ER-2022-0337 **33 MPSC 3d 502**

§9. Jurisdiction and powers of the State Commission

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to 33 MO. P.S.C. 3d Union Electric Company d/b/a Ameren Missouri 502 reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 502**

§9. Jurisdiction and powers of the State Commission

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 503**

§9. Jurisdiction and powers of the State Commission

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§9. Jurisdiction and powers of the State Commission

Stakeholders requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers.

EW-2021-0267 **33 MPSC 3d 720**

§9. Jurisdiction and powers of the State Commission

The Commission lifted a portion of a previously ordered prohibition against aggregators of retail customers (ARCs) to allow commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an ARC.

EW-2021-0267 **33 MPSC 3d 720**

§9. Jurisdiction and powers of the State Commission

The Commission found that it is authorized to issue a line-certificate certificate of convenience and necessity (CCN).

EA-2023-0017 **33 MPSC 3d 731**

§9. Jurisdiction and powers of the State Commission

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve

consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 731**

§9. Jurisdiction and powers of the State Commission

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

EW-2021-0267 **33 MPSC 3d 1208**

§9. Jurisdiction and powers of the State Commission

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

EW-2021-0267 **33 MPSC 3d 1208**

§9. Jurisdiction and powers of the State Commission

The Commission clarified that utilities should take the steps necessary to ensure they are meeting their commitments to implement data sharing protocols in compliance with applicable standards, not that all utilities needed full adoption immediately.

EW-2021-0267 **33 MPSC 3d 1208**

§9. Jurisdiction and powers of the State Commission

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

EW-2021-0267 **33 MPSC 3d 1208**

§11. Territorial agreements

The Commission analyzed the seven factors set forth in

Section 386.800.2, RSMo (Supp. 2022) to analyze a territorial agreement regarding the provision of electric service to an area not currently served within city limits.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§11. Territorial agreements

The Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§11. Territorial agreements

The Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no party requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§11. Territorial agreements

The Commission was not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the territorial agreement.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 053**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipal owned utilities and rural electric cooperatives.

EO-2023-0126 **33 MPSC 3d 166**

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2023-0126 **33 MPSC 3d 166**

§11. Territorial agreements

An evidentiary hearing is required unless the territorial agreement is resolved between the parties; thus, the Commission found that it may make a determination without an evidentiary hearing.

EO-2023-0126 **33 MPSC 3d 166**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

EO-2023-0256 **33 MPSC 3d 469**

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2023-0256 **33 MPSC 3d 469**

§11. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2023-0256 **33 MPSC 3d 469**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives.

EO-2023-0439 **33 MPSC 3d 696**

§11. Territorial agreements

The Commission may approve a territorial agreement's

service area designation if the territorial agreement in total is not detrimental to the public interest.

EO-2023-0439 **33 MPSC 3d 696**

§11. Territorial agreements

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

EO-2023-0439 **33 MPSC 3d 696**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements and their addendums between electrical corporations and rural electric cooperatives.

EO-2024-0116 **33 MPSC 3d 935**

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2024-0116 **33 MPSC 3d 935**

§11. Territorial agreements

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2024-0116 **33 MPSC 3d 935**

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements and addendums between electrical corporations utilities and rural electric cooperatives.

EO-2024-0144 **33 MPSC 3d 1196**

§11. Territorial agreements

The Commission may approve a territorial agreement, if in total it is not detrimental to the public interest.

EO-2024-0144 **33 MPSC 3d 1196**

§13.1. Energy Efficiency

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

EA-2022-0245 **33 MPSC 3d 369**

§13.1. Energy Efficiency

The Commission accepted Staff's Report which found no imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

EO-2023-0180 **33 MPSC 3d 465**

§13.1. Energy Efficiency

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

EO-2023-0361, EO-2023-0362, EO-2023-0363 & EO-2023-0364 **33 MPSC 3d 715**

§13.1. Energy Efficiency

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

EO-2023-0358 **33 MPSC 3d 917**

§13.1. Energy Efficiency

The Commission granted a variance where an absence of a large bank of Renewable Energy Credits (RECs) would require the utility to use RECs generated during the compliance year to meet the RES requirements. The rule at

issue requires utilities to retire RECs within the compliance calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year.

EE-2024-0037 **33 MPSC 3d 931**

§18. Depreciation

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 502**

§20. Rates

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 502**

§20. Rates

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

ER-2022-0337 **33 MPSC 3d 502**

§20. Rates

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

ER-2022-0337 **33 MPSC 3d 502**

§20. Rates

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to 33 MO. P.S.C. 3d Union Electric Company d/b/a Ameren Missouri 502 reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 502**

§20. Rates

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

ER-2022-0337 **33 MPSC 3d 503**

§20. Rates

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§20. Rates

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 959**

§22. Revenue

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that

allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 503**

§27. Accounting

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 502**

§27. Accounting

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 503**

§28. Apportionment

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a

general rate case.

ER-2022-0337 **33 MPSC 3d 503**

§29. Rate of return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

WR-2023-0006 **33 MPSC 3d 818**

§29. Rate of return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

WR-2023-0006 **33 MPSC 3d 819**

§29. Rate of return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 819**

§30. Construction

The Commission found that Commission Rule 20 CSR 4240-20.045 provides that a utility must seek a certificate of convenience and necessity (CCN) prior to construction or operation of a new asset. "Construction" as defined in that

rule includes “[T]he improvement, retrofit, or rebuild of an asset that will result in a ten percent increase in rate base as established in the electric utility’s most recent rate case.”

ER-2022-0337 **33 MPSC 3d 502**

§37. Liability for damage

The Commission cannot grant a relief in equity or award punitive damages.

EC-2023-0395 **33 MPSC 3d 966**

§38. Financing practices

The Commission approved an electric utility’s application to issue debt securities.

EF-2023-0425 **33 MPSC 3d 710**

§38. Financing practices

The Commission found that Section 393.200, RSMo (2016), and Commission Rule 20 CSR 4240-10.125 require a utility to obtain the Commission’s authority to issue debt securities.

EF-2023-0425 **33 MPSC 3d 710**

§38. Financing practices

The Commission found that Sections 393.180 and 393.200, RSMo (2016), authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.

EF-2023-0425 **33 MPSC 3d 710**

§40. Reports, records and statements

The Commission found that Commission Rule 20 CSR 4240-3.175(1)(A)2A requires the Continuing Property Record (CPR) database include the annual dollar additions and dollar retirements by vintage year and year retired beginning with the earliest year of available data.

ER-2022-0337 **33 MPSC 3d 502**

§40. Reports, records and statements

The Commission found that it may prescribe uniform methods of keeping accounts and records to be observed by electric corporations. The Commission may also prescribe the accounts into which particular outlays and receipts shall be entered, charged, or credited. Thus, the Commission directed records be kept of several types of infrastructure by account, rate schedule, and voltage among other data-keeping directives.

ER-2022-0337 **33 MPSC 3d 503**

§40. Reports, records and statements

The Commission granted a variance where an absence of a large bank of Renewable Energy Credits (RECs) would require the utility to use RECs generated during the compliance year to meet the RES requirements. The rule at issue requires utilities to retire RECs within the compliance calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year.

EE-2024-0037 **33 MPSC 3d 931**

§42. Planning and management

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

EA-2022-0245 **33 MPSC 3d 369**

§42. Planning and management

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

EO-2023-0361, EO-2023-0362, EO-2023-0363 & EO-2023-0364 **33 MPSC 3d 715**

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

EO-2024-0042 **33 MPSC 3d 899**

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

EO-2024-0043 & EO-2024-0044 **33 MPSC 3d 905**

§42. Planning and management

The Commission determined which specified planning issues needed to be addressed.

EO-2024-0045 **33 MPSC 3d 911**

§42. Planning and management

The Commission accepted an electric utility's 2022 Renewable Energy Standard (RES) Compliance Report and its 2023 Annual RES Standard Compliance Plan.

EO-2023-0358 **33 MPSC 3d 917**

§42. Planning and management

The Commission granted a variance where an absence of a large bank of Renewable Energy Credits (RECs) would require the utility to use RECs generated during the compliance year to meet the RES requirements. The rule at issue requires utilities to retire RECs within the compliance calendar year, as long as the retirements the following year do not exceed 10% of the retirements of the total RECs retired for the compliance year.

EE-2024-0037 **33 MPSC 3d 931**

§46. Relations between connecting companies generally

The Commission opened a workshop file to receive input on an appropriate response from the Commission to Order No.

2222 issued by the Federal Energy Regulatory Commission (FERC). Order No. 2222 amended FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators. The Commission had previously prohibited the operation of aggregations of retail customers (ARCs) in Missouri.

EW-2021-0267 **33 MPSC 3d 477**

§46. Relations between connecting companies generally

The Commission gave notice that the Lawrence Berkeley National Laboratory prepared a report, Regulation of Third-Party Aggregation in the (Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) Footprints, with particular focus on states within two regional transmission organizations, including Missouri. A copy of the report is filed in this docket.

EW-2021-0267 **33 MPSC 3d 477**

§46. Relations between connecting companies generally

Stakeholders requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers.

EW-2021-0267 **33 MPSC 3d 720**

§46. Relations between connecting companies generally

The Commission lifted a portion of a previously ordered prohibition against aggregators of retail customers (ARCs) to allow commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly

or through an ARC.

EW-2021-0267 **33 MPSC 3d 720**

§46. Relations between connecting companies generally

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1208**

§46. Relations between connecting companies generally

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

EW-2021-0267 **33 MPSC 3d 1208**

§48. Contracts

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1208**

EVIDENCE, PRACTICE AND PROCEDURE

I. IN GENERAL

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II. PARTICULAR KINDS OF EVIDENCE

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III. PRACTICE AND PROCEDURE

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EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

The Commission found that good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.” Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary

person to neglect one of his [legal] duties.” To constitute good cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.” And some legitimate factual showing is required, not just the mere conclusion of a party or its attorney.

WR-2022-0303 **33 MPSC 3d 316**

§1. Generally

At a discovery conference, Complainant stated that he would provide answers to four outstanding data requests. The Commission directed Complainant to answer these data requests, and subsequently granted a motion to compel Complainant to answer the data requests.

EC-2023-0395 **33 MPSC 3d 673**

§1. Generally

In denying Staff’s Motion to Pursue an Injunction, the Commission found that for a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. The Commission denied Staff’s request because the motion failed to allege facts supporting that the utility company was about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision.

EC-2024-0015 **33 MPSC 3d 691**

§1. Generally

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 959**

§1. Generally

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

EC-2023-0395 **33 MPSC 3d 966**

§1. Generally

The Commission found that only genuine disputes as to material facts preclude summary determination. The Commission denied a motion for summary determination as a disagreement of a due date, a material fact, still existed.

EC-2023-0395 **33 MPSC 3d 966**

§1. Generally

In finding the motion for summary judgment to be legally defective, the Commission determined that the motion failed to set forth each material fact in separately numbered paragraphs and failed to specifically reference the record.

WC-2022-0295 **33 MPSC 3d 1175**

§2. Jurisdiction and powers

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§2. Jurisdiction and powers

A motion to compel sought answers to data requests regarding bills and leases. The party opposing the motion to compel argued that the cost to individually access and print the requested bills would require significant time and effort.

The Commission found the data requests for the bills and leases were relevant and likely to lead to admissible evidence.

WC-2022-0295 **33 MPSC 3d 610**

§2. Jurisdiction and powers

The Commission clarified a prior order granting a motion to compel.

WR-2023-0006 **33 MPSC 3d 648**

§2. Jurisdiction and powers

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 648**

§2. Jurisdiction and powers

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 657**

§2. Jurisdiction and powers

In denying Staff's Motion to Pursue an Injunction, the Commission found that for a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. The Commission denied Staff's request because the motion failed to allege facts supporting that the utility company was about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision.

EC-2024-0015 **33 MPSC 3d 691**

§2. Jurisdiction and powers

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 959**

§2. Jurisdiction and powers

The Commission cannot grant a relief in equity or award punitive damages.

EC-2023-0395 **33 MPSC 3d 966**

§2. Jurisdiction and powers

Where the language of the tariff differed from a stipulation and agreement, the Commission found that the utility failed to comply with the terms of the Commission order approving stipulation and agreement.

EC-2023-0395 **33 MPSC 3d 966**

§2. Jurisdiction and powers

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EO-2022-0040 & EO-2022-0193 **33 MPSC 3d 1015**

§2. Jurisdiction and powers

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EF-2022-0155 **33 MPSC 3d 1215**

§2. Jurisdiction and powers

In denying a motion for its general counsel to seek an

injunction to stay eminent domain proceedings in circuit court, the Commission found that it cannot seek an injunction unless there is a violation or imminent violation of law subject to Commission jurisdiction.

EC-2024-0015 **33 MPSC 3d 1383**

§4. Presumption and burden of proof

Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.

WR-2023-0006 **33 MPSC 3d 819**

§4. Presumption and burden of proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

EC-2023-0395 **33 MPSC 3d 966**

§5. Admissibility

A motion to compel sought answers to data requests regarding bills and leases. The party opposing the motion to compel argued that the cost to individually access and print the requested bills would require significant time and effort. The Commission found the data requests for the bills and leases were relevant and likely to lead to admissible evidence.

WC-2022-0295 **33 MPSC 3d 610**

§5. Admissibility

The Commission denied several motions seeking restoration of electric service as the motions either sought a ruling without the Commission considering properly admitted

evidence, or were based on events occurring after the evidentiary hearing.

EC-2023-0395 **33 MPSC 3d 967**

§5. Admissibility

In striking a filing which included a settlement offer, the Commission found that Commission rules makes privileged the facts disclosed in the course of a pre-hearing conference and settlement offers.

EC-2023-0395 **33 MPSC 3d 1168**

§6. Weight, effect and sufficiency

The Commission was not persuaded by Public Counsel's arguments that a lack of choice in service provider in an area devoid of electric service is sufficient reason to reject the territorial agreement.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 054**

§6. Weight, effect and sufficiency

The Commission found that good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law." Similarly, "good cause" has also been judicially defined as a "substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties." To constitute good cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical." And some legitimate factual showing is required, not just the mere conclusion of a party or its attorney.

WR-2022-0303 **33 MPSC 3d 316**

§6. Weight, effect and sufficiency

The Commission found that MAWC's annual CAM filing to be sufficient for the Commission to analyze MAWC's affiliate transactions.

WR-2022-0303 **33 MPSC 3d 408**

§6. Weight, effect and sufficiency

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§6. Weight, effect and sufficiency

The Commission found that statements made to the Texas Commission, the approval of funding of the utility, the allocation of costs, and the setting executive salary levels indicate a level of control by a shareholder beyond that of a mere investor, and more indicative of active management.

WR-2023-0006 **33 MPSC 3d 616**

§6. Weight, effect and sufficiency

The Commission found that several facts indicate a greater involvement in utility operations and management than that of a typical holding company.

WR-2023-0006 **33 MPSC 3d 657**

§6. Weight, effect and sufficiency

The Commission found that only genuine disputes as to material facts preclude summary determination. The Commission denied a motion for summary determination as a disagreement of a due date, a material fact, still existed.

EC-2023-0395 **33 MPSC 3d 966**

§6. Weight, effect and sufficiency

The Commission found that Commission approved tariffs have the same force and effect as statutes.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

The Commission found that a courtesy email providing the terms of a payment agreement is a pending payment agreement and not a payment agreement. This finding was supported by the complainant having prior payment agreements indicating sufficient experience to know that the agreement does not become effective until the initial payment.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

An argument that a rule restricting disconnections to days when utility personal are available for reconnection is inapplicable was rejected by the Commission because the rule does not discuss meters whatsoever, and is therefore applicable no matter what kind of meter a customer possesses.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

In denying the allegation that the utility denied service, the Commission relied upon the credibility of witnesses.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

In denying the allegation that the utility denied a medical hardship extension, the Commission relied upon the submitted evidence showing the necessary paperwork was submitted after disconnection.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

In denying the allegation that the utility did not remove amounts discharged in bankruptcy, the Commission relied

upon the records of the utility and the complainant's failure to submit supportive evidence.

EC-2023-0395 **33 MPSC 3d 967**

§6. Weight, effect and sufficiency

In denying the allegation that the utility's customer service was rude to the complainant and called him a liar, the Commission relied upon the credibility of witnesses.

EC-2023-0395 **33 MPSC 3d 968**

§6. Weight, effect and sufficiency

In denying the allegation that the utility billed complainant for summer usage in the winter and winter usage in the summer, the Commission relied upon the records of the utility which indicated both bills in question having overlapped both summer and winter usage time periods and were thus appropriately billed.

EC-2023-0395 **33 MPSC 3d 968**

§6. Weight, effect and sufficiency

Based in part on a recorded phone call with the utility's customer service which included the complainant acknowledging the due date, the Commission determined the disputed due date of an initial payment for a payment plan.

EC-2023-0395 **33 MPSC 3d 968**

§8. Stipulation

The Commission found that Commission Rule 20 CSR 4240-2.115(2) provides that a non-unanimous stipulation and agreement can be treated as unanimous if no party objects within seven days.

WA-2022-0311 **33 MPSC 3d 002**

§8. Stipulation

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the agreement as unanimous.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 054**

§8. Stipulation

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the Agreement as unanimous.

EA-2022-0244 **33 MPSC 3d 295**

§8. Stipulation

In approving a non-unanimous stipulation, the Commission found that Commission Rule 20 CSR 4240-2.115 allows parties seven days to object to a non-unanimous agreement and also allows the Commission to treat the non-unanimous agreement as unanimous if no party timely objects.

EO-2019-0132 **33 MPSC 3d 955**

§9. Particular kinds of evidence generally

The Commission found that it is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.

EA-2022-0245 **33 MPSC 3d 369**

§9. Particular kinds of evidence generally

A motion to compel sought answers to data requests regarding bills and leases. The party opposing the motion to compel argued that the cost to individually access and print the requested bills would require significant time and effort. The Commission found the data requests for the bills and leases were relevant and likely to lead to admissible

evidence.

WC-2022-0295 **33 MPSC 3d 610**

§9. Particular kinds of evidence generally

Where the language of the tariff differed from a stipulation and agreement, the Commission found that the utility failed to comply with the terms of the Commission order approving stipulation and agreement.

EC-2023-0395 **33 MPSC 3d 966**

§9. Particular kinds of evidence generally

The Commission found that a courtesy email providing the terms of a payment agreement is a pending payment agreement and not a payment agreement. This finding was supported by the complainant having prior payment agreements indicating sufficient experience to know that the agreement does not become effective until the initial payment.

EC-2023-0395 **33 MPSC 3d 967**

§9. Particular kinds of evidence generally

An argument that a rule restricting disconnections to days when utility personal are available for reconnection is inapplicable was rejected by the Commission because the rule does not discuss meters whatsoever, and is therefore applicable no matter what kind of meter a customer possesses.

EC-2023-0395 **33 MPSC 3d 967**

§9. Particular kinds of evidence generally

In denying the allegation that the utility denied service, the Commission relied upon the credibility of witnesses.

EC-2023-0395 **33 MPSC 3d 967**

§9. Particular kinds of evidence generally

In denying the allegation that the utility denied a medical hardship extension, the Commission relied upon the submitted evidence showing the necessary paperwork was submitted after disconnection.

EC-2023-0395 **33 MPSC 3d 967**

§9. Particular kinds of evidence generally

In denying the allegation that the utility did not remove amounts discharged in bankruptcy, the Commission relied upon the records of the utility and the complainant's failure to submit supportive evidence.

EC-2023-0395 **33 MPSC 3d 967**

§9. Particular kinds of evidence generally

In denying the allegation that the utility's customer service was rude to the complainant and called him a liar, the Commission relied upon the credibility of witnesses.

EC-2023-0395 **33 MPSC 3d 968**

§9. Particular kinds of evidence generally

In denying the allegation that the utility billed complainant for summer usage in the winter and winter usage in the summer, the Commission relied upon the records of the utility which indicated both bills in question having overlapped both summer and winter usage time periods and were thus appropriately billed.

EC-2023-0395 **33 MPSC 3d 968**

§9. Particular kinds of evidence generally

In striking a filing which included a settlement offer, the Commission found that Commission rules makes privileged the facts disclosed in the course of a pre-hearing conference and settlement offers.

EC-2023-0395 **33 MPSC 3d 1168**

§19. Records and books of utilities

In finding that information regarding capital structure was relevant, the Commission found that relevance can be established by a showing of the connection of the requested information to this rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

WR-2022-0303 **33 MPSC 3d 316**

§19. Records and books of utilities

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 648**

§19. Records and books of utilities

In granting a request for more information about corporate governance, the Commission cited several examples of uncertainty as to what corporation was controlling and managing a water utility.

WR-2023-0006 **33 MPSC 3d 648**

§19. Records and books of utilities

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 657**

§19. Records and books of utilities

The Commission found that a data request was overly broad in that it requested information for separate corporate entities operating in states other than Missouri and for

transactions having nothing to do with Missouri.

WR-2023-0006 **33 MPSC 3d 657**

§19. Records and books of utilities

Based in part on a recorded phone call with the utility's customer service which included the complainant acknowledging the due date, the Commission determined the disputed due date of an initial payment for a payment plan.

EC-2023-0395 **33 MPSC 3d 968**

§20. Reports by utilities

The Commission found that MAWC's annual CAM filing to be sufficient for the Commission to analyze MAWC's affiliate transactions.

WR-2022-0303 **33 MPSC 3d 408**

§22. Parties

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 648**

§22. Parties

The Commission is expressly required by Section 393.140(12), RSMo (2016), to examine the dealings of regulated entities with their unregulated counterparts to review if operations are kept substantially separate and apart.

WR-2023-0006 **33 MPSC 3d 657**

§22. Parties

The Commission found that a data request was overly broad

in that it requested information for separate corporate entities operating in states other than Missouri and for transactions having nothing to do with Missouri.

WR-2023-0006 **33 MPSC 3d 657**

§22. Parties

The Commission denied a request to intervene where the motion did not demonstrate an interest in this matter different from that of the general public and that the movant would be adversely affected by a final order arising from this case. Further, the Commission found nothing in the motion suggesting the proposed intervention would serve the public interest.

ET-2024-0156 **33 MPSC 3d 959**

§22. Parties

The Commission found that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule, tariff, or order of the Commission.

EC-2023-0395 **33 MPSC 3d 968**

§23. Notice and hearing

The Commission must hold an evidentiary hearing on the proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing. Since an agreement was made and no party requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 054**

§23. Notice and hearing

An evidentiary hearing is required unless the territorial agreement is resolved between the parties; thus, the Commission found that it may make a determination without an evidentiary hearing.

EO-2023-0126 **33 MPSC 3d 166**

§23. Notice and hearing

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2023-0256 **33 MPSC 3d 469**

§23. Notice and hearing

The requirement for a hearing is met when the opportunity for a hearing has been provided.

SA-2023-0215 **33 MPSC 3d 598**

§23. Notice and hearing

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

EO-2023-0439 **33 MPSC 3d 696**

§23. Notice and hearing

Where an evidentiary hearing is required unless the territorial agreement is resolved between the parties, and the Commission found that as no party has requested a hearing, the Commission may make a determination without an evidentiary hearing.

EO-2024-0116 **33 MPSC 3d 935**

§23. Notice and hearing

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.

GA-2023-0441 **33 MPSC 3d 1160**

§23. Notice and hearing

The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.

GA-2024-0100 **33 MPSC 3d 1363**

§24. Procedures, evidence and proof

The Commission found that its rule regarding an informal discovery dispute resolution process must be followed before any written discovery motion is filed.

EA-2022-0245 **33 MPSC 3d 050**

§24. Procedures, evidence and proof

In finding that information regarding capital structure was relevant, the Commission found that relevance can be established by a showing of the connection of the requested information to this rate case. Rate cases as a matter of course involve apportionment of capitalization, which involves assessments of capital structure.

WR-2022-0303 **33 MPSC 3d 316**

§24. Procedures, evidence and proof

A motion to compel sought answers to data requests regarding bills and leases. The party opposing the motion to compel argued that the cost to individually access and print the requested bills would require significant time and effort. The Commission found the data requests for the bills and leases were relevant and likely to lead to admissible evidence.

WC-2022-0295 **33 MPSC 3d 610**

§24. Procedures, evidence and proof

The Commission clarified a prior order granting a motion to compel.

WR-2023-0006 **33 MPSC 3d 648**

§24. Procedures, evidence and proof

At a discovery conference, Complainant stated that he would provide answers to four outstanding data requests. The Commission directed Complainant to answer these data requests, and subsequently granted a motion to compel Complainant to answer the data requests.

EC-2023-0395 **33 MPSC 3d 673**

§24. Procedures, evidence and proof

In denying Staff's Motion to Pursue an Injunction, the Commission found that for a separate injunctive action to be pursued, facts must be submitted supporting that a violation law, rule or order of the Commission has or is about to occur. The Commission denied Staff's request because the motion failed to allege facts supporting that the utility company was about to fail or omit to do anything required of it or about to violate any law, any Commission order, or any Commission decision.

EC-2024-0015 **33 MPSC 3d 691**

§24. Procedures, evidence and proof

In determining whether a utility's conduct was prudent, the Commission will judge that conduct by: asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. The Commission's responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

WR-2023-0006 **33 MPSC 3d 819**

§24. Procedures, evidence and proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

EC-2023-0395 **33 MPSC 3d 966**

§24. Procedures, evidence and proof

Where the language of the tariff differed from a stipulation and agreement, the Commission found that the utility failed to comply with the terms of the Commission order approving stipulation and agreement.

EC-2023-0395 **33 MPSC 3d 966**

§24. Procedures, evidence and proof

The Commission denied several motions seeking restoration of electric service as the motions either sought a ruling without the Commission considering properly admitted evidence, or were based on events occurring after the evidentiary hearing.

EC-2023-0395 **33 MPSC 3d 967**

§24. Procedures, evidence and proof

The Commission found that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule, tariff, or order of the Commission.

EC-2023-0395 **33 MPSC 3d 968**

§24. Procedures, evidence and proof

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EO-2022-0040 & EO-2022-0193 **33 MPSC 3d 1015**

§24. Procedures, evidence and proof

The Commission denied applications for rehearing regarding its decision in a case to construct a direct current transmission line.

EA-2023-0017 **33 MPSC 3d 1172**

§24. Procedures, evidence and proof

In finding the motion for summary judgment to be legally

defective, the Commission determined that the motion failed to set forth each material fact in separately numbered paragraphs and failed to specifically reference the record.

WC-2022-0295 **33 MPSC 3d 1175**

§24. Procedures, evidence and proof

The Commission found that its rules state that the Commission may hear argument on a motion for summary determination; however, the Commission determined it unnecessary for the pending motion.

WC-2022-0295 **33 MPSC 3d 1175**

§24. Procedures, evidence and proof

The Commission found that its rules provide that the Commission may grant a motion for summary determination if there is no genuine issue as to any material fact, and the Commission determines that the granting of summary determination is in the public interest.

WC-2022-0295 **33 MPSC 3d 1175**

§24. Procedures, evidence and proof

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EF-2022-0155 **33 MPSC 3d 1215**

§24. Procedures, evidence and proof

In denying a motion for its general counsel to seek an injunction to stay eminent domain proceedings in circuit court, the Commission found that it cannot seek an injunction unless there is a violation or imminent violation of law subject to Commission jurisdiction.

EC-2024-0015 **33 MPSC 3d 1383**

§26. Burden of proof

Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the

Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.

WR-2023-0006 **33 MPSC 3d 819**

§26. Burden of proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

EC-2023-0395 **33 MPSC 3d 966**

§26. Burden of proof

The Commission found that in a complaint case, the burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the complainant.

EC-2023-0395 **33 MPSC 3d 968**

§26. Burden of proof

The Commission found that the party requesting summary determination has the burden of establishing a right to judgment as a matter of law.

WC-2022-0295 **33 MPSC 3d 1175**

§27. Finality and conclusiveness

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EO-2022-0040 & EO-2022-0193 **33 MPSC 3d 1015**

§27. Finality and conclusiveness

The Commission denied applications for rehearing regarding its decision in a case to construct a direct current transmission line.

EA-2023-0017 **33 MPSC 3d 1172**

§27. Finality and conclusiveness

The Commission issued an order nunc pro tunc to correct an internal inconsistency in a prior order.

EF-2022-0155 **33 MPSC 3d 1215**

§29. Discovery

The Commission found that its rule regarding an informal discovery dispute resolution process must be followed before any written discovery motion is filed.

EA-2022-0245 **33 MPSC 3d 050**

§29. Discovery

The Commission found that the Office of the Public Counsel was entitled to certain information under section 386.450, RSMo, and further that the requested information was relevant and should be produced.

WR-2022-0303 **33 MPSC 3d 316**

§29. Discovery

The Commission found that its rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. Particular to the Commission, parties may use data requests as a means of discovery.

WR-2023-0006 **33 MPSC 3d 616**

§29. Discovery

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence.

WR-2023-0006 **33 MPSC 3d 616**

§29. Discovery

The Commission determined that Missouri's courts have indicated that there are two aspects to relevance - logical

relevance and legal relevance. Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable. In determining legal relevance, the court, or administrative agency, must weigh “the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect.”

WR-2023-0006 **33 MPSC 3d 616**

§29. Discovery

In denying a motion to compel, the Commission found that the moving party failed in its burden to show that the probative value of the exit interviews outweighs concerns of potential confusion of the issues, undue delay, and waste of time. The Commission further found that the request for exit interviews is not reasonably calculated to lead to the discovery of admissible evidence.

WR-2023-0006 **33 MPSC 3d 617**

§29. Discovery

The Commission clarified a prior order granting a motion to compel.

WR-2023-0006 **33 MPSC 3d 648**

§29. Discovery

In granting a request for more information about corporate governance, the Commission cited several examples of uncertainty as to what corporation was controlling and managing a water utility.

WR-2023-0006 **33 MPSC 3d 648**

§29. Discovery

The Commission found that its rules of procedure provide

that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. Particular to the Commission, parties may use data requests as a means of discovery.

WR-2023-0006 **33 MPSC 3d 657**

§29. Discovery

The Commission found that Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence. Missouri's courts have indicated that there are two aspects to relevance – logical relevance and legal relevance. Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable. In determining legal relevance, the court, or administrative agency, must weigh “the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect.”

WR-2023-0006 **33 MPSC 3d 657**

§29. Discovery

At a discovery conference, Complainant stated that he would provide answers to four outstanding data requests. The Commission directed Complainant to answer these data requests, and subsequently granted a motion to compel Complainant to answer the data requests.

EC-2023-0395 **33 MPSC 3d 673**

§30. Settlement procedures

The Commission found that Commission Rule 20 CSR 4240-2.115(2) provides that a non-unanimous stipulation and

agreement can be treated as unanimous if no party objects within seven days.

WA-2022-0311 **33 MPSC 3d 002**

§30. Settlement procedures

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the agreement as unanimous.

EO-2022-0190 & EO-2022-0332 **33 MPSC 3d 054**

§30. Settlement procedures

Commission regulations allow non-signatory parties seven days to object to a nonunanimous stipulation and agreement. If no party timely objects, the Commission may treat the Agreement as unanimous.

EA-2022-0244 **33 MPSC 3d 295**

§30. Settlement procedures

The Commission found that pursuant to Commission Rule, where a stipulation was not signed by all parties, the Commission can treat them as if they were unanimous because no party filed a timely objection.

WR-2022-0303 **33 MPSC 3d 408**

§30. Settlement procedures

In approving a non-unanimous stipulation, the Commission found that Commission Rule 20 CSR 4240-2.115 allows parties seven days to object to a non-unanimous agreement and also allows the Commission to treat the non-unanimous agreement as unanimous if no party timely objects.

EO-2019-0132 **33 MPSC 3d 955**

§30. Settlement procedures

In striking a filing which included a settlement offer, the Commission found that Commission rules makes privileged

the facts disclosed in the course of a pre-hearing conference and settlement offers.

EC-2023-0395 **33 MPSC 3d 1168**

§32. Confidential evidence

The Commission found that it has a rule regarding protecting confidential information which sets out the procedure for the responding party to designate data request responses as “confidential” without the need for a Commission order.

EA-2022-0245 **33 MPSC 3d 050**

§32. Confidential evidence

So as to not duplicate work already done in a separate working group addressing affiliate transactions rules, the Commission denied a request to open a new rulemaking case to resolve a question of applicability of the affiliate transaction rules to water and sewer utilities.

WR-2022-0303 **33 MPSC 3d 408**

§32. Confidential evidence

The Commission found that customer-specific information is confidential; however, the Commission may waive this provision for good cause. Good cause exists to waive confidentiality as to a utility’s bills and gas usage because the Commission would be unable to write findings of fact or a decision that did not use some customer-specific information.

GC-2023-0143 **33 MPSC 3d 629**

EXPENSE

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the utility**
- §3. Financing practices**
- §4. Apportionment**

- §5. Valuation
- §6. Accounting

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. EXPENSES OF PARTICULAR UTILITIES

- §10. Electric and power
- §11. Gas
- §12. Heating
- §13. Telecommunications
- §14. Water
- §15. Sewer

IV. ASCERTAINMENT OF EXPENSES

- §16. Ascertainment of expenses generally
- §17. Extraordinary and unusual expenses
- §18. Comparisons in absence of evidence
- §19. Future expenses
- §20. Methods of estimating
- §21. Intercompany costs or dealings

V. REASONABLENESS OF EXPENSE

- §22. Reasonableness generally
- §23. Comparisons to test reasonableness
- §24. Test year and true up

VI. PARTICULAR KIND OF EXPENSE

- §25. Particular kinds of expenses generally
- §26. Accidents and damages
- §27. Additions and betterments
- §28. Advertising, promotion and publicity
- §29. Appraisal expense
- §30. Auditing and bookkeeping
- §31. Burglary loss
- §32. Casualty losses and expenses
- §33. Capital amortization
- §34. Collection fees
- §35. Construction
- §36. Consolidation expense
- §37. Depreciation
- §38. Deficits under rate schedules
- §39. Donations
- §40. Dues
- §41. Employee's pension and welfare

- §42. Expenses relating to property not owned
- §43. Expenses and losses of subsidiaries or other departments
- §44. Expenses of non-utility business
- §45. Expenses relating to unused property
- §46. Expenses of rate proceedings
- §47. Extensions
- §48. Financing costs and interest
- §49. Franchise and license expense
- §50. Insurance and surety premiums
- §51. Legal expense
- §52. Loss from unprofitable business
- §53. Losses in distribution
- §54. Maintenance and depreciation; repairs and replacements
- §55. Management, administration and financing fees
- §56. Materials and supplies
- §57. Purchases under contract
- §58. Office expense
- §59. Officers' expenses
- §60. Political and lobbying expenditures
- §61. Payments to affiliated interests
- §62. Rentals
- §63. Research
- §64. Salaries and wages
- §65. Savings in operation
- §66. Securities redemption or amortization
- §67. Taxes
- §68. Uncollectible accounts
- §69. Administrative expense
- §70. Engineering and superintendence expense
- §71. Interest expense
- §72. Preliminary and organization expense
- §73. Expenses incurred in acquisition of property
- §74. Demand charges
- §75. Expenses incidental to refunds for overcharges
- §76. Matching revenue/expense/rate base
- §77. Adjustments to test year levels
- §78. Isolated adjustments
- §79. Infrastructure system replacement surcharge (ISRS) eligible expense

EXPENSE

§22. Reasonableness generally

The Commission accepted Staff's Report which found no

imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

EO-2023-0180 **33 MPSC 3d 465**

§73. Expenses incurred in acquisition of property

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 144**

§73. Expenses incurred in acquisition of property

In analyzing the recovery of certain transaction costs, the Commission relied on the underlying premise that founded the distinction of transaction costs versus transition costs – the net original cost rule. The rule states “Generally, transaction costs which do not benefit the ratepayer and are only costs of ownership are not recoverable from customers.”

WR-2023-0006 **33 MPSC 3d 819**

GAS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §4. Abandonment or discontinuance
- §5. Liability for damages
- §6. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions

§9. Jurisdiction and powers of local authorities

III. CONSTRUCTION AND EQUIPMENT

- §10. Construction and equipment generally**
- §11. Leakage, shrinkage and waste**
- §12. Location**
- §13. Additions and betterments**
- §14. Extensions**
- §15. Maintenance**
- §16. Safety**

IV. OPERATION

- §17. Operation generally**
- §17.1. Purchased Gas Adjustment (PGA)**
- §17.2. Purchased Gas-incentive mechanism**
- §18. Rates**
- §19. Revenue**
- §20. Return**
- §21. Service**
- §22. Weatherization**
- §23. Valuation**
- §24. Accounting**
- §25. Apportionment**
- §26. Restriction of service**
- §27. Depreciation**
- §28. Discrimination**
- §29. Costs and expenses**
- §30. Reports, records and statements**
- §31. Interstate operation**
- §32. Financing practices**
- §33. Billing practices**
- §34. Accounting Authority orders**
- §35. Safety**

V. JOINT OPERATIONS

- §36. Joint operations generally**
- §37. Division of revenue**
- §38. Division of expenses**
- §39. Contracts**
- §40. Transportation**
- §41. Pipelines**

VI. PARTICULAR KIND OF EXPENSES

- §42. Particular kinds of expenses generally**
- §42.1. Infrastructure system replacement surcharge (ISRS) eligible expense**
- §43. Accidents and damages**
- §44. Additions and betterments**

- §45. Advertising, promotion and publicity
- §46. Appraisal expense
- §47. Auditing and bookkeeping
- §48. Burglary loss
- §49. Casualty losses and expenses
- §50. Capital amortization
- §51. Collection fees
- §52. Construction
- §53. Consolidation expense
- §54. Depreciation
- §55. Deficits under rate schedules
- §56. Donations
- §57. Dues
- §58. Employee's pension and welfare
- §59. Expenses relating to property not owned
- §60. Expenses and losses of subsidiaries or other departments
- §61. Expenses of non-utility business
- §62. Expenses relating to unused property
- §63. Expenses of rate proceedings
- §64. Extensions
- §65. Financing costs and interest
- §66. Franchise and license expense
- §67. Insurance and surety premiums
- §68. Legal expense
- §69. Loss from unprofitable business
- §70. Losses in distribution
- §71. Maintenance and depreciation; repairs and replacements
- §72. Management, administration and financing fees
- §73. Materials and supplies
- §74. Purchases under contract
- §75. Office expense
- §76. Officers' expenses
- §77. Political and lobbying expenditures
- §78. Payments to affiliated interests
- §79. Rentals
- §80. Research
- §81. Salaries and wages
- §82. Savings in operation
- §83. Securities redemption or amortization
- §84. Taxes
- §85. Uncollectible accounts
- §86. Administrative expense
- §87. Engineering and superintendence expense
- §88. Interest expense
- §89. Preliminary and organization expense
- §90. Expenses incurred in acquisition of property
- §91. Demand charges
- §92. Expenses incidental to refunds for overcharges

§93. Infrastructure system replacement surcharge (ISRS) eligible expense

GAS

§3. Certificate of convenience and necessity

The Commission approved an electric utility's application to expand its service area in the City of Oronogo, Missouri.

GA-2023-0038 **33 MPSC 3d 133**

§3. Certificate of convenience and necessity

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0038 **33 MPSC 3d 133**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0038 **33 MPSC 3d 133**

§3. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by

the award of the certificate.

GA-2023-0038 **33 MPSC 3d 133**

§3. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

GA-2023-0038 **33 MPSC 3d 133**

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

GA-2023-0110 **33 MPSC 3d 139**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0110 **33 MPSC 3d 139**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the

Tartan Factors.

EA-2022-0244 **33 MPSC 3d 295**

§3. Certificate of convenience and necessity

The Commission amended a previous grant of a certificate of convenience and necessity to incorporate a later-filed stipulation and agreement involving a second natural gas distribution company.

GA-2023-0110 **33 MPSC 3d 486**

§3. Certificate of convenience and necessity

The Commission approved Spire's request to expand its Certificate of Convenience and Necessity (CCN) to a natural gas distribution system in Cass County, Missouri.

GA-2023-0389 **33 MPSC 3d 667**

§3. Certificate of convenience and necessity

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0389 **33 MPSC 3d 667**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0389 **33 MPSC 3d 667**

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility's application to expand its service area in Johnson County, Missouri.

GA-2023-0374 **33 MPSC 3d 684**

§3. Certificate of convenience and necessity

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

GA-2023-0374 **33 MPSC 3d 685**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0374 **33 MPSC 3d 685**

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility's application to expand its service area in Platte County, Missouri.

GA-2023-0441 **33 MPSC 3d 1160**

§3. Certificate of convenience and necessity

The Commission may grant a gas corporation a Certificate of

Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

GA-2023-0441 **33 MPSC 3d 1160**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0441 **33 MPSC 3d 1160**

§3. Certificate of convenience and necessity

In granting a waiver of the feasibility study requirement, the Commission found that the assets in the requested service area were installed in 1997 and 2004 and that plans, specifications, or estimates were no longer available for the installed assets.

GA-2023-0441 **33 MPSC 3d 1160**

§3. Certificate of convenience and necessity

The Commission approved a gas distribution utility's application to expand its service area in Cass County, Missouri.

GA-2024-0100 **33 MPSC 3d 1364**

§3. Certificate of convenience and necessity

The Commission may grant a gas corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.”

GA-2024-0100 **33 MPSC 3d 1364**

§3. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2024-0100 **33 MPSC 3d 1364**

§7. Jurisdiction and powers of the State Commission

The Commission found that a person may file a complaint against a utility which is regulated by this Commission. The complaint shall set forth allegations of violations of any law, rule or order of the Commission.

GC-2023-0143 **33 MPSC 3d 629**

§33. Billing practices

The Commission found that for all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period.

GC-2023-0143 **33 MPSC 3d 629**

§33. Billing practices

The Commission found that language in the tariff regarding undercharges defines a period beginning on the date of discovery, inquiry, or actual notification of the company, and extends backwards in time for up to 60 months.

GC-2023-0143 **33 MPSC 3d 629**

MANUFACTURED HOUSING

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the manufacturers and dealers**
- §3. Jurisdiction and powers of Federal authorities**
- §4. Jurisdiction and powers of the State Commission**
- §5. Reports, records and statements**

II. WHEN A PERMIT IS REQUIRED

- §6. When a permit is required generally**
- §7. Operations and construction**

III. GRANT OR REFUSAL OF A PERMIT

- §8. Grant or refusal generally**
- §9. Restrictions or conditions**
- §10. Who may possess**
- §11. Public safety**

IV. OPERATION, TRANSFER, REVOCATION OR CANCELLATION

- §12. Operations under the permit generally**
- §13. Duration of the permit**
- §14. Modification and amendment of the permit generally**
- §15. Transfer, mortgage or lease generally**
- §16. Revocation, cancellation and forfeiture generally**
- §17. Acts or omissions justifying revocation or forfeiture**
- §18. Necessity of action by the Commission**
- §19. Penalties**

MANUFACTURED HOUSING

No headnotes in this volume involved the question of Manufactured Housing.

PUBLIC UTILITIES

I. IN GENERAL

- §1. Generally**
- §2. Nature of**

- §3. Functions and powers
- §4. Termination of status
- §5. Obligation of the utility

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. FACTORS AFFECTING PUBLIC UTILITY CHARACTER

- §10. Tests in general
- §11. Franchises
- §12. Charters
- §13. Acquisition of public utility property
- §14. Compensation or profit
- §15. Eminent domain
- §16. Property sold or leased to a public utility
- §17. Restrictions on service, extent of use
- §18. Size of business
- §19. Solicitation of business
- §20. Submission to regulation
- §21. Sale of surplus
- §22. Use of streets or public places

IV. PARTICULAR ORGANIZATIONS-PUBLIC UTILITY CHARACTER

- §23. Particular organizations generally
- §24. Municipal plants
- §25. Municipal districts
- §26. Mutual companies; cooperatives
- §27. Corporations
- §28. Foreign corporations or companies
- §29. Unincorporated companies
- §30. State or federally owned or operated utility
- §31. Trustees

PUBLIC UTILITIES

§1. Generally

The Commission estimated the expenses to be incurred by it during the fiscal year commencing July 1, 2023. These expenses are reasonably attributable to the regulation of

public utilities as provided in Chapters 386, 392 and 393, RSMo.

AO-2023-0417 **33 MPSC 3d 572**

§2. Nature of

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 732**

§2. Nature of

The Commission found that the fact that the utility service agreement is contained in a lease between a landlord and a tenant does not place it beyond Commission's jurisdiction.

WC-2022-0295 **33 MPSC 3d 1175**

§2. Nature of

The Commission found that the fundamental characteristic of a public utility is indiscriminate dealing with the general public.

WC-2022-0295 **33 MPSC 3d 1176**

§3. Functions and powers

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

EW-2021-0267 **33 MPSC 3d 1209**

§7. Jurisdiction and powers of the State Commission

The Commission estimated the expenses to be incurred by it during the fiscal year commencing July 1, 2023. These expenses are reasonably attributable to the regulation of

public utilities as provided in Chapters 386, 392 and 393, RSMo.

AO-2023-0417 **33 MPSC 3d 572**

§7. Jurisdiction and powers of the State Commission

While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.

EA-2023-0017 **33 MPSC 3d 732**

§7. Jurisdiction and powers of the State Commission

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

EW-2021-0267 **33 MPSC 3d 1209**

§9. Jurisdiction and powers of local authorities

The Commission found that condemnation proceedings are governed by Chapter 523, RSMo, and are the purview of the state courts. The process includes protections for landowners including, a court review of whether the company negotiated in good faith; the requirement for applications filed after August 28, 2022, for payment for agricultural or horticultural land at 150% of fair value, and Section 523.265, RSMo (2016), which allows a landowner to propose alternate locations.

EA-2023-0017 **33 MPSC 3d 732**

§10. Tests in general

The Commission found that the fact that the utility service agreement is contained in a lease between a landlord and a tenant does not place it beyond Commission's jurisdiction.

WC-2022-0295 **33 MPSC 3d 1175**

§13. Acquisition of public utility property

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either “necessary or convenient for the public service.”

WA-2022-0311 **33 MPSC 3d 002**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2022-0311 **33 MPSC 3d 002**

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 002**

§13. Acquisition of public utility property

The Commission determined that the acquisition of the City of Oronogo's natural gas system by Spire Missouri Inc. promoted the public interest as evidenced by a vote of the citizens of the City of Oronogo.

GA-2023-0038 **33 MPSC 3d 133**

§13. Acquisition of public utility property

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

WA-2023-0345 **33 MPSC 3d 490**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 491**

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

EA-2023-0226 **33 MPSC 3d 579**

§13. Acquisition of public utility property

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

EA-2023-0226 **33 MPSC 3d 579**

§13. Acquisition of public utility property

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 585**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 586**

§13. Acquisition of public utility property

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00

per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§13. Acquisition of public utility property

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2023-0215 **33 MPSC 3d 598**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0215 **33 MPSC 3d 598**

§13. Acquisition of public utility property

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather

that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

GA-2023-0389 **33 MPSC 3d 667**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0389 **33 MPSC 3d 667**

§13. Acquisition of public utility property

The Commission may grant an electric corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."

GA-2023-0374 **33 MPSC 3d 685**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

GA-2023-0374 **33 MPSC 3d 685**

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§13. Acquisition of public utility property

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0450 **33 MPSC 3d 1187**

§13. Acquisition of public utility property

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2024-0129 **33 MPSC 3d 1371**

§13. Acquisition of public utility property

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of a certificate of convenience and necessity (CCN).

SA-2024-0129 **33 MPSC 3d 1371**

§13. Acquisition of public utility property

In granting a certificate of convenience and necessity (CCN),

the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2024-0129 **33 MPSC 3d 1371**

§13. Acquisition of public utility property

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2024-0129 **33 MPSC 3d 1371**

§15. Eminent domain

The Commission found that condemnation proceedings are governed by Chapter 523, RSMo, and are the purview of the state courts. The process includes protections for landowners including, a court review of whether the company negotiated in good faith; the requirement for applications filed after August 28, 2022, for payment for agricultural or horticultural land at 150% of fair value, and Section 523.265, RSMo (2016), which allows a landowner to propose alternate locations.

EA-2023-0017 **33 MPSC 3d 732**

§15. Eminent domain

The Commission found that Section 523.277, RSMo (2016) created the Office of Ombudsman for Property Rights, appointed by the Public Counsel, to “assist citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures.”

EA-2023-0017 **33 MPSC 3d 732**

§19. Solicitation of business

The Commission found that the fundamental characteristic of a public utility is indiscriminate dealing with the general public.

WC-2022-0295 **33 MPSC 3d 1176**

§23. Particular organizations generally

The Commission clarified that as Evergy Metro and Evergy West operate in Missouri as separate utility companies with different service areas, they will be treated as separate utilities.

EW-2021-0267 **33 MPSC 3d 1209**

RATES**I. JURISDICTION AND POWERS**

- §1. Jurisdiction and powers generally
- §2. Jurisdiction and powers of Federal Commissions
- §3. Jurisdiction and powers of the State Commission
- §4. Jurisdiction and powers of the courts
- §5. Jurisdiction and powers of local authorities
- §6. Limitations on jurisdiction and power
- §7. Obligation of the utility

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

- §8. Reasonableness generally
- §9. Right of utility to accept less than a reasonable rate
- §10. Ability to pay
- §11. Breach of contract
- §12. Capitalization and security prices
- §13. Character of the service
- §14. Temporary or emergency
- §15. Classification of customers
- §16. Comparisons
- §17. Competition
- §18. Consolidation or sale
- §19. Contract or franchise rate
- §20. Costs and expenses

- §21. Discrimination, partiality, or unfairness
- §22. Economic conditions
- §23. Efficiency of operation and management
- §24. Exemptions
- §25. Former rates; extent of change
- §26. Future prospects
- §27. Intercompany relations
- §28. Large consumption
- §29. Liability of utility
- §30. Location
- §31. Maintenance of service
- §32. Ownership of facilities
- §33. Losses or profits
- §34. Effects on patronage and use of the service
- §35. Patron's profit from use of service
- §36. Public or industrial use
- §37. Refund and/or reduction
- §38. Reliance on rates by patrons
- §39. Restriction of service
- §40. Revenues
- §41. Return
- §42. Seasonal or irregular use
- §43. Substitute service
- §44. Taxes
- §45. Uniformity
- §46. Value of service
- §47. Value of cost of the property
- §48. Violation of law or orders
- §49. Voluntary rates
- §50. What the traffic will bear
- §51. Wishes of the utility or patrons

III. CONTRACTS AND FRANCHISES

- §52. Contracts and franchises generally
- §53. Validity of rate contract
- §54. Filing and Commission approval
- §55. Changing or terminating-contract rates
- §56. Franchise or public contract rates
- §57. Rates after expiration of franchise
- §58. Effect of filing new rates
- §59. Changes by action of the Commission
- §60. Changes or termination of franchise or public contract rate
- §61. Restoration after change

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO

- §62. Initiation of rates and rate changes
- §63. Proper rates when existing rates are declared illegal
- §64. Reduction of rates

- §65. Refunds
- §66. Filing of schedules reports and records
- §67. Publication and notice
- §68. Establishment of rate base
- §69. Approval or rejection by the Commission
- §70. Legality pending Commission action
- §71. Suspension
- §72. Effective date
- §73. Period for which effective
- §74. Retroactive rates
- §75. Deviation from schedules
- §76. Form and contents
- §77. Billing methods and practices
- §78. Optional rate schedules
- §79. Test or trial rates

V. KINDS AND FORMS OF RATES AND CHARGES

- §80. Kinds and forms of rates and charges in general
- §81. Surcharges
- §82. Uniformity of structure
- §83. Cost elements involved
- §84. Load, diversity and other factors
- §85. Flat rates and charges
- §86. Mileage charges
- §87. Zone rates
- §88. Transition from flat to meter
- §89. Straight, block or step-generally
- §90. Contract or franchise requirement
- §91. Two-part rate combinations
- §92. Charter, contract, statutory, or franchise restrictions
- §93. Demand charge
- §94. Initial charge
- §95. Meter rental
- §96. Minimum bill or charge
- §97. Maximum charge or rate
- §98. Wholesale rates
- §99. Charge when service not used; discontinuance
- §100. Variable rates based on costs-generally
- §101. Fuel clauses
- §102. Installation, connection and disconnection charges
- §103. Charges to short time users

VI. RATES AND CHARGES OF PARTICULAR UTILITIES

- §104. Electric and power
- §105. Demand, load and related factors
- §106. Special charges; amount and computation
- §107. Kinds and classes of service
- §108. Gas

- §109. Heating
- §110. Telecommunications
- §111. Water
- §112. Sewers
- §113. Joint Municipal Utility Commissions

VII. EMERGENCY AND TEMPORARY RATES

- §114. Emergency and temporary rates generally
- §115. What constitutes an emergency
- §116. Prices
- §117. Burden of proof to show emergencies

VIII. RATE DESIGN, CLASS COST OF SERVICE

- §118. Method of allocating costs
- §119. Rate design, class cost of service for electric utilities
- §120. Rate design, class cost of service for gas utilities
- §121. Rate design, class cost of service for water utilities
- §122. Rate design, class cost of service for sewer utilities
- §123. Rate design, class cost of service for telecommunications utilities
- §124. Rate design, class cost of service for heating utilities

RATES

§3. Jurisdiction and powers of the State Commission

The Commission has general authority to review any new tariffed programs and associated charges.

EA-2022-0245 **33 MPSC 3d 370**

§3. Jurisdiction and powers of the State Commission

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§3. Jurisdiction and powers of the State Commission

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

ER-2022-0337 **33 MPSC 3d 504**

§3. Jurisdiction and powers of the State Commission

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

ER-2022-0337 **33 MPSC 3d 504**

§3. Jurisdiction and powers of the State Commission

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 504**

§3. Jurisdiction and powers of the State Commission

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§3. Jurisdiction and powers of the State Commission

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 959**

§3. Jurisdiction and powers of the State Commission

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

EW-2021-0267 **33 MPSC 3d 1209**

§6. Limitations on jurisdiction and power

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

EW-2021-0267 **33 MPSC 3d 1209**

§8. Reasonableness generally

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§8. Reasonableness generally

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

ER-2022-0337 **33 MPSC 3d 504**

§8. Reasonableness generally

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

ER-2022-0337 **33 MPSC 3d 504**

§8. Reasonableness generally

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§12. Capitalization and security prices

The Commission found that a proposed hypothetical capital structure of 50% equity and 50% debt is appropriate. The Commission reasoned that ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. Each side of the ratemaking calculation, rate payers and shareholders, would be protected from the other having a greater share.

WR-2023-0006 **33 MPSC 3d 819**

§12. Capitalization and security prices

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

WR-2023-0006 **33 MPSC 3d 820**

§12. Capitalization and security prices

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

WR-2023-0006 **33 MPSC 3d 820**

§15. Classification of customers

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§18. Consolidation or sale

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§19. Contract or franchise rate

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1209**

§20. Costs and expenses

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 504**

§25. Former rates; extent of change

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§32. Ownership of facilities

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that

allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 504**

§41. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

WM-2022-0186 **33 MPSC 3d 144**

§41. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

WR-2023-0006 **33 MPSC 3d 820**

§41. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

WR-2023-0006 **33 MPSC 3d 820**

§41. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.

WR-2023-0006 **33 MPSC 3d 820**

§41. Return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 820**

§45. Uniformity

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§47. Value of cost of the property

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a

general rate case.

ER-2022-0337 **33 MPSC 3d 504**

§51. Wishes of the utility or patrons

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§62. Initiation of rates and rate changes

The Commission has general authority to review any new tariffed programs and associated charges.

EA-2022-0245 **33 MPSC 3d 370**

§62. Initiation of rates and rate changes

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§62. Initiation of rates and rate changes

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

EW-2021-0267 **33 MPSC 3d 1209**

§68. Establishment of rate base

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction,

closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 002**

§68. Establishment of rate base

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§68. Establishment of rate base

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§68. Establishment of rate base

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§69. Approval or rejection by the Commission

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 959**

§74. Retroactive rates

The Commission found that reaching back to include actual revenues or expenses in prior years for determining expenses in the current rate case would be retroactive ratemaking.

WR-2023-0006 **33 MPSC 3d 820**

§80. Kinds and forms of rates and charges in general

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

ER-2022-0337 **33 MPSC 3d 504**

§80. Kinds and forms of rates and charges in general

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 504**

§80. Kinds and forms of rates and charges in general

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§80. Kinds and forms of rates and charges in general

The Commission granted authority for a company to switch the default time-of-use (TOU) plan to which a customer shall be placed where the Commission found that the application was not a collateral attack on the prior decision, but simply a modification of the default for plans that were previously approved.

ET-2024-0156 **33 MPSC 3d 960**

§83. Cost elements involved

The Commission accepted Staff's Report which found no imprudence in costs recovered through the Demand-Side Programs Investment Mechanisms (DSIM) during the review period.

EO-2023-0180 **33 MPSC 3d 465**

§85. Flat rates and charges

Where a system being acquired previously did not charge for water or sewer service, the Commission found a flat rate of \$20.00 per month for water service and a flat rate of \$20.00 per month for sewer service to be reasonable, which is consistent with the currently approved water and sewer charges in the acquiring utility's nearby service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock.

WA-2023-0284 **33 MPSC 3d 586**

§98. Wholesale rates

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1209**

§98. Wholesale rates

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

EW-2021-0267 **33 MPSC 3d 1209**

§100. Variable rates based on costs-generally

To avoid adding further confusion to time-of-use (TOU) rates, the Commission found it appropriate to retain the existing monthly residential customer charge.

ER-2022-0337 **33 MPSC 3d 504**

§100. Variable rates based on costs-generally

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 504**

§100. Variable rates based on costs-generally

The Commission granted a company's request to switch the default time-of-use (TOU) rate from a high-differential two-period TOU rate to a low-differential TOU already approved.

ET-2024-0061 **33 MPSC 3d 703**

§104. Electric and power

The Commission must determine whether the proposed rates are just and reasonable when deciding the rates a utility may charge its customers.

ER-2022-0337 **33 MPSC 3d 504**

§104. Electric and power

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 504**

§104. Electric and power

The Commission clarified that its Order does not modify or change the terms of any existing utility tariff, such as a Special Rate for Incremental Load Service (SIL) tariff or the Market Based Demand Response Program (MBDR).

EW-2021-0267 **33 MPSC 3d 1209**

§104. Electric and power

In authorizing a customer with multiple sites under the same corporate ownership to aggregate multiple sites, the Commission clarified that the aggregator of retail customers (ARC) must provide evidence that demonstrates the corporate relationship.

EW-2021-0267 **33 MPSC 3d 1209**

§104. Electric and power

The Commission issued an order clarifying its order allowing commercial and industrial (C&I) customers with demands of 100 kilowatts or greater to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC).

EW-2021-0267 **33 MPSC 3d 1209**

§118. Method of allocating costs

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§118. Method of allocating costs

The Commission found that Section 393.1620.2 RSMo

(Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 504**

§119. Rate design, class cost of service for electric utilities

In determining to allocate rate increases as an even percentage to all classes, the Commission found that none of the parties' Class Cost of Service Studies (CCOSS) suitable for setting rates that are just and reasonable in this rate case. The Commission has much discretion in determining the theory or method it uses in determining rates and can make pragmatic adjustments called for by particular circumstances.

ER-2022-0337 **33 MPSC 3d 503**

§119. Rate design, class cost of service for electric utilities

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 504**

SECURITY ISSUES

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Authorization by a corporation
- §4. Conversion, redemption and purchase by a corporation
- §5. Decrease of capitalization
- §6. Sinking funds
- §7. Dividends
- §8. Revocation and suspension of Commission authorization
- §9. Fees and expenses
- §10. Purchase by utility
- §11. Accounting practices

II. JURISDICTION AND POWERS

- §12. Jurisdiction and powers in general
- §13. Jurisdiction and powers of Federal Commissions
- §14. Jurisdiction and powers of the State Commission
- §15. Jurisdiction and powers of local authorities

III. NECESSITY OF AUTHORIZATION BY THE COMMISSION

- §16. Necessity of authorization by the Commission generally
- §17. Installment contracts
- §18. Refunding or exchange of securities
- §19. Securities covering utility and nonutility property
- §20. Securities covering properties outside the State

IV. FACTORS AFFECTING AUTHORIZATION

- §21. Factors affecting authorization generally
- §21.1. Effect on bond rating
- §22. Equity capital
- §23. Charters
- §24. Competition
- §25. Compliance with the terms of a mortgage or lease
- §26. Definite plans and purposes
- §27. Financial conditions and prospects
- §28. Use of proceeds
- §29. Dividends and dividend restrictions
- §30. Improper practices and irregularities
- §31. Intercompany relations
- §32. Necessity of issuance
- §33. Revenue
- §34. Rates and rate base
- §35. Size of the company
- §36. Title of property

- §37. Amount
- §38. Kind of security
- §39. Restrictions imposed by the security

V. PURPOSES AND SUBJECTS OF CAPITALIZATION

- §40. Purposes and subjects of capitalization generally
- §41. Additions and betterments
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- §43. Compensation for services and stockholders' contributions
- §44. Deficits and losses
- §45. Depreciation funds and requirements
- §46. Financing costs
- §47. Intangible property
- §48. Going value and good will
- §49. Stock dividends
- §50. Loans to affiliated interests
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- §54. Reimbursement of treasury
- §55. Renewals, replacements and reconstruction
- §56. Working capital

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- §57. Bonds or stock
- §58. Common or preferred stock
- §59. Stock without par value
- §60. Short term notes
- §61. Proportions of stock, bonds and other security
- §62. Proportion of debt to net plant

VII. SALE PRICE AND INTEREST RATES

- §63. Sale price and interest rates generally
- §64. Bonds
- §65. Notes
- §66. Stock
- §67. Preferred stock
- §68. No par value stock

VIII. FINANCING METHODS AND PRACTICES

- §69. Financing methods and practices generally
- §70. Leases
- §71. Financing expense
- §72. Payment for securities
- §73. Prospectuses and advertising
- §74. Subscriptions and allotments
- §75. Stipulation as to rate base

IX. PARTICULAR UTILITIES

- §76. Telecommunications**
- §77. Electric and power**
- §78. Gas**
- §79. Sewer**
- §80. Water**
- §81. Miscellaneous**

SECURITY ISSUES**§3. Authorization by a corporation**

The Commission found that Sections 393.180 and 393.200, RSMo (2016), authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.

EF-2023-0425 **33 MPSC 3d 710**

§14. Jurisdiction and powers of the State Commission

The Commission approved an electric utility's application to issue debt securities.

EF-2023-0425 **33 MPSC 3d 710**

§16. Necessity of authorization by the Commission generally

The Commission found that Section 393.200, RSMo (2016), and Commission Rule 20 CSR 4240-10.125 require a utility to obtain the Commission's authority to issue debt securities.

EF-2023-0425 **33 MPSC 3d 710**

§40. Purposes and subjects of capitalization generally

The Commission found that Sections 393.180 and 393.200, RSMo (2016), authorize public utilities to issue long-term financing, when necessary, for the purposes enumerated in the statute.

EF-2023-0425 **33 MPSC 3d 710**

SERVICE

I. IN GENERAL

- §1. Generally**
- §2. What constitutes adequate service**
- §3. Obligation of the utility**
- §4. Abandonment, discontinuance and refusal of service**
- §5. Contract, charter, franchise and ordinance provisions**
- §6. Restoration or continuation of service**
- §7. Substitution of service**
- §7.1. Change of supplier**
- §8. Discrimination**

II. JURISDICTION AND POWERS

- §9. Jurisdiction and powers generally**
- §10. Jurisdiction and powers of the Federal Commissions**
- §11. Jurisdiction and powers of the State Commission**
- §12. Jurisdiction and powers over service outside of the state**
- §13. Jurisdiction and powers of the courts**
- §14. Jurisdiction and powers of local authorities**
- §15. Limitations on jurisdiction**
- §16. Enforcement of duty to serve**

III. DUTY TO SERVE

- §17. Duty to serve in general**
- §18. Duty to render adequate service**
- §19. Extent of profession of service**
- §20. Duty to serve as affected by contract**
- §21. Duty to serve as affected by charter, franchise or ordinance**
- §22. Duty to serve persons who are not patrons**
- §23. Reasons for failure or refusal to serve**
- §24. Duty to serve as affected by inadequate revenue**

IV. OPERATIONS

- §25. Operations generally**
- §26. Extensions**
- §27. Trial or experimental operation**
- §28. Consent of local authorities**
- §29. Service area**
- §30. Rate of return**
- §31. Rules and regulations**
- §32. Use and ownership of property**

- §33. Hours of service
- §34. Restriction on service
- §35. Management and operation
- §36. Maintenance
- §37. Equipment
- §38. Standard service
- §39. Noncontinuous service

V. SERVICE BY PARTICULAR UTILITIES

- §40. Gas
- §41. Electric and power
- §42. Heating
- §43. Water
- §44. Sewer
- §45. Telecommunications

VI. CONNECTIONS, INSTRUMENTS AND EQUIPMENT

- §46. Connections, instruments and equipment in general
- §47. Duty to install, own and maintain
- §48. Protection, location and liability for damage
- §49. Restriction and control of connections, instruments and equipment

SERVICE

§11. Jurisdiction and powers of the State Commission

The Commission found that Sections 393.130 and 393.140, RSMo (2016), mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

ER-2022-0337 **33 MPSC 3d 505**

§11. Jurisdiction and powers of the State Commission

The Commission found a larger differential time-of-use (TOU) rate more appropriate as the default TOU rate plan because the larger differential plan has a greater potential to reduce peak load and most closely aligns with other service providers' TOU default plans in Missouri.

ER-2022-0337 **33 MPSC 3d 505**

SEWER

I. IN GENERAL

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the Federal Commissions
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of local authorities
- §9. Territorial agreements

III. OPERATIONS

- §10. Operation generally
- §11. Construction and equipment
- §12. Maintenance
- §13. Additions and betterments
- §14. Rates and revenues
- §15. Return
- §16. Costs and expenses
- §17. Service
- §18. Depreciation
- §19. Discrimination
- §20. Apportionment
- §21. Accounting
- §22. Valuation
- §23. Extensions
- §24. Abandonment or discontinuance
- §25. Reports, records and statements
- §26. Financing practices
- §27. Security issues
- §28. Rules and regulations
- §29. Billing practices
- §30. Eminent domain
- §31. Accounting Authority orders

SEWER

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in Stewartsville, Missouri.

WA-2022-0311 **33 MPSC 3d 002**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

WA-2023-0071 **33 MPSC 3d 026**

§2. Certificate of convenience and necessity

The Commission approved a water utility's application to expand its service area in St. Charles County, Missouri.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in Cass County, Missouri.

SA-2023-0187 **33 MPSC 3d 321**

§2. Certificate of convenience and necessity

The Commission is authorized to grant a sewer corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

SA-2023-0187 **33 MPSC 3d 321**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0187 **33 MPSC 3d 322**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

WA-2023-0345 **33 MPSC 3d 491**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 491**

§2. Certificate of convenience and necessity

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

WA-2023-0284 **33 MPSC 3d 586**

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 586**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 587**

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in Ralls County, Missouri.

SA-2023-0215 **33 MPSC 3d 598**

§2. Certificate of convenience and necessity

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public

occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2023-0215 **33 MPSC 3d 598**

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2023-0215 **33 MPSC 3d 598**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0215 **33 MPSC 3d 598**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

WA-2023-0398 **33 MPSC 3d 809**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0398 **33 MPSC 3d 809**

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in the Village of Luray, Missouri.

SA-2023-0437 **33 MPSC 3d 923**

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

SA-2023-0437 **33 MPSC 3d 923**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2023-0437 **33 MPSC 3d 924**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in several areas in Missouri.

WA-2023-0450 **33 MPSC 3d 1188**

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a

Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

WA-2023-0450 **33 MPSC 3d 1188**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0450 **33 MPSC 3d 1188**

§2. Certificate of convenience and necessity

The Commission approved a sewer utility's application to expand its service area in Jefferson County, Missouri.

SA-2024-0129 **33 MPSC 3d 1371**

§2. Certificate of convenience and necessity

Subsection 393.170.3, RSMo (Supp. 2022), requires that the Commission determine that the services are "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

SA-2024-0129 **33 MPSC 3d 1371**

§2. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by

the award of a certificate of convenience and necessity (CCN).

SA-2024-0129 **33 MPSC 3d 1372**

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

SA-2024-0129 **33 MPSC 3d 1372**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

SA-2024-0129 **33 MPSC 3d 1372**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 002**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§4. Transfer, lease and sale

The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.

WM-2022-0186 **33 MPSC 3d 144**

§4. Transfer, lease and sale

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WM-2022-0186 **33 MPSC 3d 144**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§7. Jurisdiction and Powers of the State Commission

The Commission found that it does not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting, or management of any nonprofit sewer company.

WM-2022-0186 **33 MPSC 3d 144**

§7. Jurisdiction and Powers of the State Commission

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 820**

§14. Rates and revenues

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§15. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

WM-2022-0186 **33 MPSC 3d 145**

§15. Return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 820**

§15. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

WR-2023-0006 **33 MPSC 3d 821**

§15. Return

The Commission found that a proposed hypothetical capital structure of 50% equity and 50% debt is appropriate. The Commission reasoned that ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. Each side of the ratemaking calculation, rate payers and shareholders, would be protected from the other having a greater share.

WR-2023-0006 **33 MPSC 3d 821**

§15. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

WR-2023-0006 **33 MPSC 3d 821**

§15. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to

compensate investors against its need to keep prices low for consumers.

WR-2023-0006 **33 MPSC 3d 821**

§18. Depreciation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

WR-2023-0006 **33 MPSC 3d 821**

§21. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 002**

§21. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§21. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§21. Accounting

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to follow the Uniform System of Accounts (USoA) for their designated class.

WR-2023-0006 **33 MPSC 3d 821**

§21. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§22. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 002**

§22. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§22. Valuation

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and

self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§22. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§22. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

STEAM

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the utility**
- §3. Certificate of convenience and necessity**
- §4. Transfer, lease and sale**
- §4.1. Change of suppliers**
- §5. Charters and franchise**
- §6. Territorial agreements**

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally**
- §8. Jurisdiction and powers of Federal Commissions**
- §9. Jurisdiction and powers of the State Commission**
- §10. Jurisdiction and powers of the local authorities**

- §11. Territorial agreements
- §12. Unregulated service agreements

III. OPERATIONS

- §13. Operations generally
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return
- §24. Services generally
- §25. Competition
- §26. Valuation
- §27. Accounting
- §28. Apportionment
- §29. Rate of return
- §30. Construction
- §31. Equipment
- §32. Safety
- §33. Maintenance
- §34. Additions and betterments
- §35. Extensions
- §36. Local service
- §37. Liability for damage
- §38. Financing practices
- §39. Costs and expenses
- §40. Reports, records and statements
- §41. Billing practices
- §42. Planning and management
- §43. Accounting Authority orders
- §44. Safety
- §45. Decommissioning costs

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46. Relations between connecting companies generally
 - §47. Physical connection
 - §48. Contracts
 - §49. Records and statements
-

STEAM

No headnotes in this volume involved the question of Steam.

TELECOMMUNICATIONS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §3.1. Certificate of local exchange service authority
- §3.2. Certificate of interexchange service authority
- §3.3. Certificate of basic local exchange service authority
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers of local authorities
- §6. Jurisdiction and powers of Federal Commissions
- §7. Jurisdiction and powers of the State Commission

III. OPERATIONS

- §8. Operations generally
- §9. Public corporations
- §10. Abandonment or discontinuance
- §11. Depreciation
- §12. Discrimination
- §13. Costs and expenses
- §13.1. Yellow Pages
- §14. Rates
- §14.1. Universal Service Fund
- §15. Establishment of a rate base
- §16. Revenue
- §17. Valuation
- §18. Accounting
- §19. Financing practices
- §20. Return
- §21. Construction
- §22. Maintenance
- §23. Rules and regulations
- §24. Equipment
- §25. Additions and betterments
- §26. Service generally
- §27. Invasion of adjacent service area

- §28. Extensions
- §29. Local service
- §30. Calling scope
- §31. Long distance service
- §32. Reports, records and statements
- §33. Billing practices
- §34. Pricing policies
- §35. Accounting Authority orders

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §36. Relations between connecting companies generally
- §37. Physical connection
- §38. Contracts
- §39. Division of revenue, expenses, etc.

V. ALTERNATIVE REGULATION AND COMPETITION

- §40. Classification of company or service as noncompetitive, transitionally , or competitive
- §41. Incentive regulation plans
- §42. Rate bands
- §43. Waiver of statutes and rules
- §44. Network modernization
- §45. Local exchange competition
- §46. Interconnection Agreements
- §46.1. Interconnection Agreements-Arbitrated
- §47. Price Cap

TELECOMMUNICATIONS

§1. Generally

The Commission approved the appointment of a new member representing the deaf to the Relay Missouri Advisory Committee.

TO-2023-0378 **33 MPSC 3d 462**

§1. Generally

The Commission approved the appointment of a new member and approved a new Chair of the Relay Missouri Advisory Committee.

TO-2024-0003 **33 MPSC 3d 626**

§7. Jurisdiction and powers of the State Commission

The Commission approved the appointment of a new member representing the deaf to the Relay Missouri Advisory Committee.

TO-2023-0378 **33 MPSC 3d 462**

§7. Jurisdiction and powers of the State Commission

The Commission approved the appointment of a new member and approved a new Chair of the Relay Missouri Advisory Committee.

TO-2024-0003 **33 MPSC 3d 626**

§7. Jurisdiction and powers of the State Commission

Eligible Telecommunications Carriers (ETCs) can relinquish ETC status upon providing 60 days' notice and demonstrating compliance with 47 United States Code Section 214(e)(4). That statute, in turn, allows the Commission to permit an ETC to relinquish its ETC status if more than one ETC serves in the area, the ETC provides the required advance notice, the ETC subscribers can be served by another ETC, and, if additional facilities are required, sufficient notice must be given for the ETC to purchase or construct the additional facilities.

RD-2024-0006 **33 MPSC 3d 680**

VALUATION**I. IN GENERAL**

- §1. Generally**
- §2. Constitutional limitations**
- §3. Necessity for**
- §4. Obligation of the utility**

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of local authorities

III. METHODS OR THEORIES OF VALUATION

- §9. Methods or theories generally
- §10. Purpose of valuation as a factor
- §11. Rule, formula or judgment as a guide
- §12. Permanent and tentative valuation

IV. ASCERTAINMENT OF VALUE

- §13. Ascertainment of value generally
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VALUATION

§6. Jurisdiction and powers of the State Commission

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§6. Jurisdiction and powers of the State Commission

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 505**

§9. Methods or theories generally

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§9. Methods or theories generally

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction,

closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§9. Methods or theories generally

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

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The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 505**

§9. Methods or theories generally

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§11. Rule, formula or judgment as a guide

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction,

closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§11. Rule, formula or judgment as a guide

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§11. Rule, formula or judgment as a guide

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§14. For rate making purposes

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§14. For rate making purposes

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§14. For rate making purposes

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 491**

§14. For rate making purposes

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 505**

§14. For rate making purposes

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§15. Purchase or sale price

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§15. Purchase or sale price

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§15. Purchase or sale price

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§15. Purchase or sale price

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WM-2022-0186 **33 MPSC 3d 145**

§15. Purchase or sale price

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 492**

§15. Purchase or sale price

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction,

closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§74. Electric and power

The Commission found that Section 393.1620.2 RSMo (Supp. 2022), states that the Commission must only consider Class Cost of Service Study (CCOSS) results that allocate production plant costs from nuclear and fossil power plants using the average and excess method, or one of the methods in the National Association of Regulatory Utility Commissioners (NARUC) 1992 manual, to allocate an electrical corporation's total revenue requirement in a general rate case.

ER-2022-0337 **33 MPSC 3d 505**

§78. Water

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§78. Water

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§78. Water

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium

would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§78. Water

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WM-2022-0186 **33 MPSC 3d 145**

§78. Water

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 492**

§78. Water

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

§79. Sewer

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0111 **33 MPSC 3d 003**

§79. Sewer

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 026**

§79. Sewer

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

79. Sewer

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WM-2022-0186 **33 MPSC 3d 145**

§79. Sewer

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 492**

§79. Sewer

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction,

closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 944**

WATER

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- §4. Transfer, lease and sale**
- §5. Joint Municipal Utility Commissions**

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WATER

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in Stewartsville, Missouri.

WA-2022-0311 **33 MPSC 3d 003**

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service."

WA-2022-0311 **33 MPSC 3d 003**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2022-0311 **33 MPSC 3d 003**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in the City of Smithton, Missouri.

WA-2023-0071 **33 MPSC 3d 026**

§2. Certificate of convenience and necessity

The Commission found that it is authorized to grant a sewer or water corporation a certificate of convenience and necessity (CCN) to operate upon determining that the construction and operation are either "necessary or convenient for the public service."

WA-2023-0071 **33 MPSC 3d 026**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal 33 MO. P.S.C. 3d Missouri-American Water Company 026 must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0071 **33 MPSC 3d 026**

§2. Certificate of convenience and necessity

The Commission approved a water utility's application to expand its service area in St.Charles County, Missouri.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

The Commission may grant a CCN to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough

to amount to a necessity.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

In granting a certificate of convenience and necessity (CCN), the Commission may impose such conditions as it may deem reasonable and necessary.

WA-2023-0092 **33 MPSC 3d 041**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in the City of Wood Heights, Missouri.

WA-2023-0345 **33 MPSC 3d 492**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and

Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0345 **33 MPSC 3d 492**

§2. Certificate of convenience and necessity

The Commission approved an electric utility's application to expand its service area in Johnson County, Missouri.

WA-2023-0284 **33 MPSC 3d 587**

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate utility systems after determining that such operation is either "necessary or convenient for the public service." The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

WA-2023-0284 **33 MPSC 3d 587**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0284 **33 MPSC 3d 587**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in Lincoln County, Missouri.

WA-2023-0398 **33 MPSC 3d 810**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0398 **33 MPSC 3d 810**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in the City of Ironton, Missouri.

WA-2023-0434 **33 MPSC 3d 944**

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."

WA-2023-0434 **33 MPSC 3d 944**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and

Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0434 **33 MPSC 3d 944**

§2. Certificate of convenience and necessity

The Commission approved a water and sewer utility's application to expand its service area in several areas in Missouri.

WA-2023-0450 **33 MPSC 3d 1188**

§2. Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are "necessary or convenient for the public service."

WA-2023-0450 **33 MPSC 3d 1188**

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

WA-2023-0450 **33 MPSC 3d 1188**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value,

together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 003**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 027**

§4. Transfer, lease and sale

The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.

WM-2022-0186 **33 MPSC 3d 145**

§4. Transfer, lease and sale

The Commission was not convinced by a claim that an arm's-length negotiation did not occur without any evidence of inappropriate interactions or that the contract price was excessive aside from its argument that it is above rate base.

WM-2022-0186 **33 MPSC 3d 145**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 492**

§4. Transfer, lease and sale

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 945**

§8. Jurisdiction and powers of the State Commission

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 821**

§16. Rates and revenues

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§17. Return

A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable, adequate service to customers. A utility company is entitled to a rate of return only on investments included in its rate base.

WM-2022-0186 **33 MPSC 3d 146**

§17. Return

The Commission has flexibility in fixing the rate of return, subject to existing economic conditions. The Commission found that the United States Supreme Court has instructed

the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.

WR-2023-0006 **33 MPSC 3d 821**

§17. Return

The Commission found that an accepted practice in utility regulation is to disregard the actual book capital structure of a utility and adopt a hypothetical capital structure for ratemaking purposes when it is deemed to be in the public interest to do so: specifically finding two circumstances: when the utility's actual debt-equity ratio is deemed inefficient and unreasonable because it contains too much equity and not enough debt, necessitating an inflated rate of return; and when the utility is part of a holding company system.

WR-2023-0006 **33 MPSC 3d 822**

§17. Return

The Commission found that a proposed hypothetical capital structure of 50% equity and 50% debt is appropriate. The Commission reasoned that ratepayers would benefit from having rates calculated from a 50% debt ratio as debt is a cheaper cost than equity; while the shareholders are benefitting from the rates being calculated from a 50% equity ratio as equity generates a greater return than debt. Each side of the ratemaking calculation, rate payers and shareholders, would be protected from the other having a greater share.

WR-2023-0006 **33 MPSC 3d 822**

§17. Return

In determining the rate of return, the Commission must consider the Company's capital structure and cost of debt, and determine the weighted cost of each component of the utility's capital structure.

WR-2023-0006 **33 MPSC 3d 822**

§17. Return

The Commission found that determining a Return on Equity (ROE) is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.

WR-2023-0006 **33 MPSC 3d 822**

§20. Depreciation

The Commission found that the Internal Revenue Code (IRC) requires the normalization of depreciation expense and the use of straight line depreciation for utility regulatory ratemaking when accelerated depreciation is used for income tax purposes.

WR-2023-0006 **33 MPSC 3d 822**

§23. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 027**

§23. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small utility.

WA-2023-0345 **33 MPSC 3d 492**

§23. Accounting

The Commission found that all water and sewer utilities under the jurisdiction of the Commission are required to

follow the Uniform System of Accounts (USoA) for their designated class.

WR-2023-0006 **33 MPSC 3d 822**

§23. Accounting

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 945**

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2022-0311 **33 MPSC 3d 003**

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0071 **33 MPSC 3d 027**

§24. Valuation

The Commission found that the evidence did not support a finding that the debt associated with the acquisition premium would put upward pressure on rates. The evidence showed that customers are protected by economies of scale and self-governance, and enjoy the convenience of local control and enhanced billing benefits.

WM-2022-0186 **33 MPSC 3d 145**

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0345 **33 MPSC 3d 492**

§24. Valuation

The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by a large water public utility, shall constitute the ratemaking rate base for an acquired small water utility.

WA-2023-0434 **33 MPSC 3d 945**
